

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CITY OF SUNRISE FIREFIGHTERS' ) CV-18-4844-BLF  
PENSION FUND, )  
 ) SAN JOSE, CALIFORNIA  
PLAINTIFF, )  
 ) OCTOBER 17, 2019  
VS. )  
 ) PAGES 1-51  
ORACLE CORPORATION ET AL, )  
 )  
DEFENDANT. )  
 )

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **BY: JOHN J. RIZIO-HAMILTON**  
BERNSTEIN LITOWITZ BERGER  
AND GROSSMANN LLP  
1251 AVENUE OF THE AMERICAS  
44TH FL.  
NEW YORK, NY 10020

FOR THE DEFENDANT: **BY: JORDAN ETH**  
**MARK FOSTER**  
**SU-HAN WANG**  
MORRISON & FOERSTER LLP  
425 MARKET STREET  
SAN FRANCISCO, CA 94105

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES CONTINUED:

FOR THE PLAINTIFF:

**BY: JONATHAN DANIEL USLANER**  
BERNSTEIN LITOWITZ BERGER AND  
GROSSMAN LLP  
2121 AVENUE OF THE STARS  
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LOS ANGELES, CA 90067

ALSO PRESENT:  
ORACLE

JIM MAROULIS

1 SAN JOSE, CALIFORNIA

OCCTOBER 17, 2019

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:02 A.M.)

4 THE CLERK: CALLING CASE 18-4844. CITY OF SUNRISE  
5 FIREFIGHTERS' PENSION FUND VERSUS ORACLE CORPORATION, ET AL.  
6 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

7 MR. RIZIO-HAMILTON: GOOD MORNING, YOUR HONOR.

8 JOHN RIZIO-HAMILTON FROM BERNSTEIN LITOWITZ BERGER AND  
9 GROSSMANN FOR THE LEAD PLAINTIFF.

10 THE COURT: GOOD MORNING. WELCOME.

11 MR. RIZIO-HAMILTON: GOOD MORNING. THANK YOU.

12 MR. ETH: GOOD MORNING, YOUR HONOR.

13 JORDAN ETH FOR DEFENDANTS. I'M HERE WITH MY COLLEAGUES  
14 MARK FOSTER AND SU-HAN WANG, AND WITH THE SENIOR MANAGING  
15 COUNSEL AT ORACLE, JIM MAROULIS.

16 THE COURT: THANK YOU. I APPRECIATE IT. THANK YOU  
17 FOR COMING TODAY.

18 MR. ETH, GOOD MORNING.

19 MR. ETH: GOOD MORNING.

20 THE COURT: ALL RIGHT.

21 WELL, THIS IS THE FIRST TIME GOING THROUGH THIS COMPLAINT  
22 ON A MOTION TO DISMISS. IT PROBABLY WON'T BE THE LAST TIME  
23 MR. ETH, I THINK YOU ARE USED TO THE DRILL HERE.

24 WHAT I WOULD LIKE TO DO, I WANT TO MAKE SOME COMMENTS, AND  
25 THEN I WOULD REALLY LIKE TO HEAR YOUR ARGUMENT ON THIS. AS

1 WITH THESE CASES, THERE'S REALLY A LOT FOR ME TO GET THROUGH  
2 THE COMPLAINT. MR. RIZIO-HAMILTON, IT'S REALLY QUITE  
3 EXTENSIVE, YOU'VE CLEARLY PUT A LOT OF WORK INTO IT.

4 MR. RIZIO-HAMILTON: THANK YOU VERY MUCH, YOUR HONOR.

5 THE COURT: THE WAY I SEE THE ALLEGATIONS OF FALSE  
6 STATEMENTS, TO ME THEY FALL INTO TWO BIG BUCKETS. AND I'M  
7 PUTTING ASIDE, MR. ETH, YOUR ARGUMENTS ON THE NONACTIONABLE,  
8 WHICH I WILL GET TO, BUT I JUST WANT TO DO THESE TWO BIG  
9 BUCKETS.

10 THERE'S, IN MY VIEW, AND I HOPE YOU WILL CORRECT ME IF I'M  
11 MISTAKEN OR OVER-GENERALIZING, THERE'S THE BUCKET OF THE  
12 STATEMENTS ABOUT THE GROWTH RATE AND THE REVENUES, SO THOSE ARE  
13 SPECIFIC FACTUAL STATEMENTS THAT ARE CLAIMED TO BE FALSE  
14 BECAUSE OF THE ALLEGED OMISSION.

15 AND THEN THERE'S THE SECOND BUCKET OF RESPONSES TO  
16 INQUIRIES ABOUT THE UNDERLYING PRACTICES THAT PRODUCED THE SALE  
17 OF THE CLOUD PRODUCTS. I DON'T READ ANY OF THE FALSE  
18 STATEMENTS THAT ARE ALLEGED TO HAVE OCCURRED IN THE CLASS  
19 PERIOD TO BE AN EXPRESS DENIAL, AND I ACCEPT THAT THE PRACTICES  
20 OCCURRED, BECAUSE THAT'S FACTUALLY ALLEGED IN THE COMPLAINT.

21 WHAT I'M MISSING FOR THOSE, I BELIEVE, IS ANY -- IS THE  
22 SUFFICIENT ALLEGATION OF SCIENTER FOR THAT BUCKET OF  
23 STATEMENTS.

24 I ALSO DON'T HAVE -- I DON'T BELIEVE THERE ARE ANY  
25 ALLEGATIONS OF SCIENTER REGARDING ELLISON, KURIAN, BOND OR

1 MIRANDA. AND I'VE POINTED OUT IN THE REPLY BRIEF, I DIDN'T SEE  
2 ANYTHING. BUT MR. RIZIO-HAMILTON, IF YOU CAN DIRECT ME TO THE  
3 PARAGRAPH WHERE YOU ESTABLISH THEIR KNOWLEDGE, I WOULD BE GLAD  
4 TO LOOK AT IT, BUT I DIDN'T EVEN SEE IT ALLEGED. AND WHETHER  
5 YOUR CW'S, YOUR CONFIDENTIAL WITNESSES, ACTUALLY HAVE ENOUGH  
6 EVIDENCE ON THE OTHERS IS A DIFFERENT ISSUE, BUT I DIDN'T SEE  
7 ANYTHING WITH REGARD TO THOSE DEFENDANTS.

8 AND I'M NOT SURE THERE ARE ANY STATEMENTS ATTRIBUTED TO  
9 MIRANDA DURING THE CLASS PERIOD. SO YOU CAN HELP ME OUT, MAYBE  
10 I MISSED IT, BUT I DIDN'T SEE ANYTHING. CLEARLY THE FOCUS IS  
11 ON MR. HURD AND MS. CATZ, C-A-T-Z, AND THEN SEPARATELY  
12 MR. KURIAN REGARDING THE INSIDER TRADING ALLEGATIONS.

13 SO THAT'S KIND OF A BIG DIVIDE, THAT'S WHERE I'M KIND OF  
14 THINKING. I'M NOT ACTUALLY SURE YOU'VE ESTABLISHED FALSITY OF  
15 THE STATEMENTS ABOUT THE REVENUES AND THE PERCENTAGE GROWTH,  
16 AND I'M NOT SEEING SUFFICIENT ALLEGATIONS OF SCIENTER AS TO THE  
17 OTHER BUCKET.

18 SO MR. ETH, IT IS YOUR MOTION, I'M GOING TO LET YOU GET  
19 STARTED.

20 MR. ETH: OKAY. THANK YOU, YOUR HONOR.

21 AND WE SEE IT BREAKING DOWN PRETTY MUCH THE WAY YOU HAVE  
22 AS WELL.

23 IT'S UNDISPUTED, OF COURSE, THAT ORACLE ACCURATELY  
24 PROJECTED IT'S CLOUD REVENUES QUARTER AFTER QUARTER. AND THE  
25 KEY ALLEGATION HERE, WHICH PLAINTIFFS REPEAT QUITE A FEW TIMES,

1 IS THAT THE REVENUES WERE NEVERTHELESS PHONY IN SOME WAY, PHONY  
2 OR BOGUS OR NOT GENUINE, A LOT OF DIFFERENT SYNONYMS FOR THAT.

3 AND THERE ARE THREE DIFFERENT REASONS WHICH CORRESPOND  
4 ROUGHLY TO WHAT THE COURT WAS JUST SAYING, THAT WE THINK THE  
5 COMPLAINT SHOULD BE DISMISSED.

6 THE FIRST ONE, OF COURSE, IS PARTICULARITY. THE SECOND IS  
7 LACK OF AN AFFIRMATIVE STATEMENT ABOUT THE SALES PRACTICES.  
8 AND THE THIRD, WHICH APPLIES ACROSS THE BOARD, IS SCIENTER.

9 AND ON PARTICULARITY, PLAINTIFFS SAY THEY HAVE DETAILED  
10 REPORTS. THERE AREN'T ANY DETAILED REPORTS. THEY SAY THAT THE  
11 CW'S, WHICH I THINK THEY CALL FE'S, BUT I THINK THEY ARE  
12 COMMONLY KNOWN AS CW'S ARE FROM THE MOST SENIOR EXECUTIVES OR  
13 SENIOR EXECUTIVES. BUT WHAT THEY ACTUALLY ARE FROM, THE BEST  
14 THEY CAN DO, IS TWO OF THE CW'S ARE FOUR LEVELS REMOVED. FOUR  
15 LEVELS REMOVED FROM MR. HURD. THAT'S THE BEST THEY CAN DO IS  
16 FOUR LEVELS OF SEPARATION.

17 AND THE CASE LAW ON CW'S IS WELL KNOWN TO THIS COURT AND  
18 THROUGHOUT THE CIRCUIT IN ZUCCO, AND INTUITIVE SYSTEMS AND SO  
19 ON. THEY DON'T MENTION ZUCCO OR INTUITIVE ON THIS POINT, SO I  
20 WILL LEAVE THAT POINT.

21 ANOTHER KEY POINT IS TIMING. THAT WHAT THE ALLEGED TRUTH  
22 IS, HAS TO MATCH UP WITH THE TIMING OF THE STATEMENTS. AND  
23 MOST OF THE VAGUE ALLEGATIONS HERE ARE ACTUALLY BEFORE THE  
24 CLASS PERIOD. IT'S LIKE WE SEE THE TRAILER MORE THAN THE MOVIE  
25 HERE, IT JUST KIND OF GOES ON, AND ON, AND ON UNTIL WE FINALLY

1 GET TO THE CLASS PERIOD.

2 THE COURT: SO WOULD YOU SUGGEST THEN THAT THE  
3 ALLEGATIONS OF FALSE STATEMENTS THAT PREDATE THE CLASS PERIOD  
4 DO NOT REASONABLY INFER THAT THAT CONDUCT CONTINUED DURING THE  
5 CLASS PERIOD?

6 MR. ETH: ABSOLUTELY.

7 THEY DON'T ACTUALLY REASONABLY SHOW THAT THEY OCCURRED  
8 BEFORE THE CLASS PERIOD. THERE'S A DIFFERENCE -- ONE IS VAGUE,  
9 GENERALIZED, DEFICIENT. THE OTHER IS EVEN WEAKER, EVEN WEAKER.

10 AND WHAT WE HEAR ABOUT THE TIMING IS THEY SAY, WELL, WE  
11 HAVE A REPORT FROM A CHILEAN COMPETITION REGULATOR. PUT ASIDE  
12 WHETHER A CHILEAN COMPETITION REGULATOR HAS ANY BEARING ON U.S.  
13 SECURITIES LAWS, THAT WAS FROM 2013, '14, '15, BEFORE THE CLASS  
14 PERIOD.

15 THERE'S A GROUP CALLED CLEAR LICENSING COUNCIL, 2015. A  
16 BUNCH OF NEWS ARTICLES. ORACLE IS A REALLY BIG COMPANY, THERE  
17 ARE NEWS ARTICLES ABOUT IT. NEWS ARTICLES FROM 2015, IT'S ALL  
18 PRE-CLASS PERIOD. SO THAT'S ANOTHER ISSUE IS TIMING.

19 THE COURT: WELL, BUT I THINK THAT MR. RIZIO-HAMILTON  
20 PROPERLY CITES CASES THAT INDICATE THAT CONDUCT THAT PRE-DATES  
21 THE CLASS PERIOD CAN PROVIDE CONTEXT. AND YOU COULD REASONABLY  
22 DRAW SOME INFERENCES ABOUT CONDUCT DURING THE CLASS PERIOD.

23 I AGREE WITH YOU THERE HAS TO ALSO BE AN ALLEGATION OF  
24 CONDUCT DURING THE CLASS PERIOD, AND MAYBE THAT'S WHERE WE NEED  
25 TO FOCUS.

1 MR. ETH: I'M NOT MOVING TO STRIKE THOSE ALLEGATIONS,  
2 I'M JUST SAYING THAT THEY DON'T SUPPORT THE CLASS PERIOD.

3 ON TOP OF THAT, CUSTOMERS, A LOT OF THIS READS LIKE A  
4 CUSTOMER COMPLAINT. WHERE ARE THE CUSTOMERS. ORACLE HAS  
5 400,000 CUSTOMERS.

6 A COUPLE OF CUSTOMERS MENTIONED, ONE IS THE CITY AND  
7 COUNTY OF DENVER BEFORE THE CLASS PERIOD, WE DON'T EVEN KNOW IF  
8 THE TRANSACTION EVEN OCCURRED, AND THAT'S BEFORE THE CLASS  
9 PERIOD. AND THE OTHER ONE IS SAUDI TELECOM. AGAIN, WE DON'T  
10 EVEN KNOW WHAT DECADE THAT WAS. THERE'S NOTHING IN THERE ABOUT  
11 THAT.

12 ON TOP OF THAT, THERE ARE NO DOLLAR FIGURES. AND THIS IS  
13 A REALLY CRUCIAL POINT, BECAUSE THE PLAINTIFFS SAY, LOOK AT ALL  
14 OF THE CORROBORATING EVIDENCE WE HAVE FROM AROUND THE GLOBE.  
15 SO-AND-SO SAID IT'S 27 PERCENT OF THIS, AND SO-AND-SO SAID IT'S  
16 90 PERCENT OF THAT, AND 15 PERCENT OF THIS, AND 30 PERCENT OF  
17 THAT.

18 YOU NOTICE THEY KEEP SAYING THIS, THAT, AND SO ON, BECAUSE  
19 WE DON'T HAVE THE X VARIABLE. AND MY CHILDREN DOING WORD  
20 PROBLEMS, THEY CAN'T FIGURE THIS OUT WITHOUT KNOWING WHAT THE X  
21 IS. 20 PERCENT OF 3 IS VERY DIFFERENT THAN 20 PERCENT OF 3  
22 MILLION OR 3 BILLION.

23 WHAT THE ALLEGATIONS ACTUALLY SAY IS FOR NORTH AMERICAN  
24 SALES, THERE WAS A FORMER EMPLOYEE, A CONFIDENTIAL WITNESS,  
25 THAT IT WAS A CERTAIN PERCENTAGE OF THE SALES THAT THAT



1 PERSON'S TEAM DEALT WITH.

2 THAT'S ANOTHER TERM, "TEAM." WHAT'S A TEAM? IS IT ONE?  
3 ARE THEY A ONE-PERSON TEAM, TWO-PERSON TEAMS, FIVE-PERSON  
4 TEAMS, 20-PERSON TEAMS, THOUSAND-PERSON TEAMS. IT'S COMPLETELY  
5 VAGUE. AND WHAT WE ASSUME IN THESE CASES, PLAINTIFFS PUT  
6 FORWARD THE BEST THAT THEY CAN.

7 AND THEN A REALLY CRITICAL POINT THAT I THINK WILL BE  
8 FATAL TO THEIR CASE IS THAT THEY NEVER -- PUT ASIDE DOLLARS OF  
9 TRANSACTIONS, THERE'S NOTHING SHOWING HOW THE DOLLARS TRANSLATE  
10 INTO RECOGNIZED REVENUES. NOTICE THAT THE FORMER EMPLOYEES ARE  
11 ALL SALES PEOPLE. WHERE'S THE ACCOUNTING PERSON? THE SALES  
12 PERSON GOES OUT, AND LET'S SAY THERE IS A DEAL. THEY DON'T  
13 ALLEGE. LET'S SAY THE DEAL IS \$10 MILLION AND LIST PRICE  
14 \$1 MILLION OF CLOUD. AGAIN, THEY DON'T ALLEGE THAT, DOES IS  
15 THAT MEAN IT'S \$1 MILLION OF REVENUE, AND FOR WHAT PERIOD?  
16 CLOUD USUALLY IS DONE RATEABLY OVER TIME. IS IT A MILLION  
17 DOLLARS AT THE TIME OF THE DEAL?

18 REVENUE RECOGNITION IS A COMPLICATED CONCEPT. THERE'S  
19 NOTHING ABOUT THAT. SO THAT COMES BACK TO AN EVEN MORE  
20 FUNDAMENTAL POINT, WHICH IS, AND THIS IS WHERE I STARTED, WE  
21 HEAR THAT THE REVENUE IS FAKE, PHONY, BOGUS, NOT GENUINE,  
22 ILLUSORY. YOU CAN LOOK THROUGH THE THESAURUS, THEY'VE COVERED  
23 IT ALL, BUT WHAT WE DON'T HAVE IS GAAP. WHERE'S THE GAAP RULE?

24 THERE ARE RULES IN THIS COUNTRY FOR HOW GAAP REVENUE IS  
25 RECOGNIZED. AND IT'S EITHER RECOGNIZED PROPERLY OR IT ISN'T.

1 WHAT'S ORACLE SUPPOSED TO DO, SAY YES, OUR AUDITOR SIGNED OFF,  
2 OUR ACCOUNTING PEOPLE SIGNED OFF, THEY ARE RIGHT, BUT WE ALSO  
3 HAVE TO DISCLOSE THEY ARE PHONY. THAT WOULD BE A MISSTATEMENT.  
4 THEY ARE CORRECT UNDER GAAP, AND THERE'S NO ALLEGATION OF GAAP.  
5 AND THIS COURT, THIS DISTRICT, THIS CIRCUIT, HAS SEEN PROBABLY  
6 HUNDREDS OF CASES ABOUT GAAP VIOLATIONS AND HOW THEY ARE TO BE  
7 ALLEGED. SO THAT'S NOT THERE.

8 OBVIOUSLY THERE'S ALL THE CASES WHICH WE'VE COVERED IN OUR  
9 BRIEFING, REDBACK AND MELTZER, AND SO FORTH, WHICH WE THINK ARE  
10 RIGHT ON POINT.

11 LET ME GO TO THE SECOND POINT THE COURT MENTIONED WHICH IS  
12 AFFIRMATIVE STATEMENTS. THE COURT POINTS TO A COUPLE OF  
13 ALLEGED DENIALS. ACTUALLY, THE COMPLAINT SAYS "REPEATED  
14 DENIALS."

15 WELL, THERE WERE SOME BEFORE THE CLASS PERIOD THEY POINT  
16 TO, DURING THE CLASS PERIOD THEY POINT TO TWO ALLEGED DENIALS,  
17 TWO. ONE WAS IN MAY OF 2017, PARAGRAPH 224, WHERE DEFENDANT  
18 BOND WAS ASKED, WHAT PERCENTAGE OF REVENUE AND MARGIN IS  
19 ASSOCIATED WITH AUDITING PRACTICES?

20 CLOUD REVENUE, THIS QUARTER? WHICH QUARTER? "ASSOCIATED  
21 WITH," WHAT DOES ANY OF THAT MEAN? AND THE ANSWER IS, WELL, I  
22 THINK THIS IS ONE OF THOSE THINGS WHERE THE STORY IS A LOT  
23 BIGGER THAN THE REALITY. WE TRY TO DO IT AS BEST WE CAN, AS  
24 GRACIOUSLY AS WE CAN. THAT'S NOT A DENIAL. IT DOESN'T SAY  
25 NEVER HAPPENED, IT'S NOT A DENIAL.

1 THE SECOND ONE, WHICH IS ABOUT A MONTH, LESS THAN A MONTH  
2 BEFORE THE END OF THE CLASS PERIOD, IT'S IN SOME KIND OF ONLINE  
3 PUBLICATION, AND IT'S CALLED *THE INFORMATION*. AND ORACLE SAID  
4 *THE INFORMATION*, WHICH IS THE NAME OF THE PUBLICATION,  
5 PRESENTED INACCURATE REPORTS REGARDING A HANDFUL OF ACCOUNTS,  
6 AND THAT WE DON'T HAVE TO SCARE OUR CUSTOMERS.

7 IT'S NOT A DENIAL. WE DON'T HAVE TO SCARE OUR CUSTOMERS,  
8 AND THAT THESE PARTICULAR ACCOUNTS FROM THAT PUBLICATION  
9 WEREN'T ACCURATE.

10 THE CASES THAT PLAINTIFFS PRIMARILY RELY ON REALLY SHOW  
11 WHAT'S MISSING HERE. I'M JUST GOING TO MENTION TWO OR THREE OF  
12 THE KEY NINTH CIRCUIT CASES. ONE OF THEM IS OREXIGEN, KHOJA V.  
13 OREXIGEN.

14 THERE, THE COMPANY HAD DONE A DRUG TRIAL, THE COURT IS  
15 FAMILIAR WITH THE CASE?

16 THE COURT: I'M FAMILIAR, YES.

17 MR. ETH: SO IT SAID WHEN YOU ARE AT THE 50 PERCENT  
18 LEVEL, AND THEY HAD INFORMATION THE DRUG DIDN'T WORK, THEY SAID  
19 LET'S TELL YOU ABOUT OUR 25 PERCENT LEVEL.

20 WELL, WAIT A MINUTE, LET'S SAY THAT THE TRIAL IS  
21 CONTINUING EVEN THOUGH IT ISN'T. WELL, ALL RIGHT. WE'VE GOT  
22 SPECIFIC DIRECT CONTRADICTION.

23 THEN THERE'S WHAT I AFFECTIONATELY CALL THE RAT STUDY  
24 CASE, WHICH IS SCHUENEMAN, WHERE THE COMPANY REPRESENTED THAT  
25 NO ANIMALS WERE BEING HARMED. RATS WERE GETTING CANCER, LIKE,

1 WE CAN PUT ASIDE WHETHER THAT'S A GOOD IDEA OR BAD IDEA, THAT'S  
2 A DIRECT CONTRADICTION OF A SPECIFIC FACT.

3 AND THEN THERE'S BERSON WHERE THE DEFENDANTS SAID, HERE IS  
4 OUR BACKLOG. WHAT THEY DIDN'T DISCLOSE IS THAT INCLUDED STOP  
5 WORK ORDERS THAT TURNED ONE OF THEIR FACTORIES INTO A GHOST  
6 TOWN.

7 SO I MEAN, THERE ARE LOTS OF OTHER CASES, BUT IT'S COVERED  
8 IN THE BRIEF. SO THAT'S THE SECOND ONE.

9 THE THIRD ONE THE COURT MENTIONED IS SCIENTER, WHICH CUTS  
10 ACROSS EVERYTHING. AND SCIENTER HAS TO BE EACH DEFENDANT, EACH  
11 STATEMENT, CAN'T BE BROAD BRUSH ALL DEFENDANTS ALL THE TIME.

12 AND CRITICAL TO THIS, LOOKING AT THE CW'S, NO PERSONAL  
13 KNOWLEDGE OF ANY OF THE CW'S OF ANYTHING THAT ANY DEFENDANT  
14 SAW, DID, WROTE, SAID, YOU KNOW, ANYTHING. THERE'S JUST NO  
15 CONNECTION. WELL, MAYBE THERE'S A DRAFT REPORT I MAY HAVE  
16 PREPARED, THAT'S THE BEST THAT THEY GET. SO IT'S JUST MIND  
17 READING. SO WE'VE GOT THAT PROBLEM.

18 THEY TRY TO RELY ON THE CORE OPERATIONS INFERENCE, WHICH  
19 THE COURT IS FAMILIAR WITH, DIFFICULT TO USE, RARE. WHAT THEY  
20 SAY IS WELL, YOU KNEW ABOUT THE BUSINESS, YOU KNEW ABOUT CLOUD.

21 WELL, THAT'S FINE, OF COURSE THEY DO, BUT WHERE IS -- YOU  
22 KNEW THAT THESE WERE FAKE. I MEAN, YOU KNEW THAT YOUR AUDITED  
23 FINANCIALS WERE WRONG. WHAT IS IT THAT YOU KNEW THAT THREE  
24 PERCENT OR 20 PERCENT OF SOMEONE'S TEAM HAD SOME PRACTICES THAT  
25 WERE X, Y OR Z, WHERE IS THAT THAT ADDS UP IN ANY WAY?

1           AND THE CASE THEY RELY ON, THE CASE CALLED MULLIGAN.  
2           MULLIGAN IS A PHARMACEUTICAL CASE WHERE THE MANUFACTURER HAD  
3           RECEIVED 483 NOTICES AND WARNING LETTERS.

4           THE COURT: PHARMACEUTICAL CASES ARE DIFFERENT  
5           BECAUSE THERE ARE LOTS OF AGENCIES GIVING A LOT OF INFORMATION.  
6           I KNOW. THEY ARE A LOT TRICKIER TO COMPARE TO THIS KIND OF  
7           CASE.

8           MR. ETH: THAT'S RIGHT. THAT'S RIGHT.

9           AND THEN WE COME TO STOCK SALES, WHICH ARE OFTEN USED IN  
10          THESE CASES. WE HAVE ONE DEFENDANT ALLEGED TO HAVE SOLD, THAT  
11          WAS MR. KURIAN, TWO STATEMENTS, I THINK HE SAID TREMENDOUS AT  
12          ONE POINT, HE SAID VERY, VERY GOOD. SO WHETHER OR NOT THOSE  
13          WOULD EVEN BE ACTIONABLE.

14          AND MANY OTHER CASES SAY WHEN YOU HAVE ONE DEFENDANT, BUT  
15          THERE ARE OTHERS WHO DON'T SELL, THAT'S NOT CORROBORATING,  
16          ESPECIALLY WHEN THEY HAVE SOMETHING LIKE \$50 BILLION WORTH.  
17          AND THERE'S A LOT OF BACK AND FORTH ABOUT WHETHER ORACLE'S  
18          BUYBACK OF \$12 BILLION CAN COME IN.

19          THE COURT: I DON'T BELIEVE I CAN ACTUALLY CONSIDER  
20          THAT AT THIS TIME. MR. RIZIO-HAMILTON OBJECTS TO THAT. I  
21          THINK THAT'S A LITTLE BIT OUTSIDE OF THE PLEADINGS.

22          MR. ETH: I UNDERSTAND. AND THAT'S FINE, WE DON'T  
23          HAVE TO GO THERE. IT IS MENTIONED IN ONE OF THE TRANSCRIPTS  
24          THAT THEY CITE, BUT THAT'S FINE. I UNDERSTAND THE POINT.

25          AND THE LAST THING I JUST WANTED TO END ON, BECAUSE I

1 THINK IT IS COVERED BY THE BRIEFS, AND THEN IF THERE'S ANYTHING  
2 TO RESPOND TO, I WILL, IT'S JUST LOOKING AT IT WHOLISTICALLY.

3 PLAINTIFF'S THEORY IS THAT ORACLE ABUSED ITS CUSTOMERS TO  
4 ENTER INTO ONE-YEAR DEALS THAT THEY KNEW WOULDN'T BE RENEWED.  
5 THAT'S WHAT ORACLE DID.

6 THERE'S NO REALLY, LIKE, WHY WOULD YOU DO THIS, OR OF  
7 COURSE ANY OTHER PARTICULARS OR ANYTHING LIKE THAT; WHEREAS THE  
8 COUNTER IS VERY STRAIGHTFORWARD, THAT ORACLE LAUNCHED AND  
9 PROMOTED A NEW PRODUCT LINE. AND IT GREW, AND IT GREW FAST.  
10 AND IT GREW FAST, BUT AT DECELERATING RATES.

11 WE SEE IN THE COMPLAINT ABOUT HOW A LOT OF SALES PLUNGED  
12 AND ALL OF THAT. THEY NEVER PLUNGED, THEY HIT A RECORD, AND  
13 ORACLE ACCURATELY FORECAST THAT THROUGHOUT.

14 THE COURT: ALL RIGHT.

15 MR. ETH: UNLESS THE COURT HAS ANY QUESTIONS.

16 THE COURT: I WILL COME BACK AFTER I HEAR FROM  
17 MR. RIZIO-HAMILTON AND GIVE YOU THE LAST WORD, BUT RIGHT NOW, I  
18 WANT TO TAKE UP SOME OF THESE ISSUES WITH HIM.

19 THANK YOU, MR. ETH.

20 MR. RIZIO-HAMILTON: GOOD MORNING, YOUR HONOR.

21 THE COURT: GOOD MORNING.

22 MR. RIZIO-HAMILTON, I THINK YOU ARE PROBABLY USED TO  
23 TAKING A SECOND CRACK AT A COMPLAINT WHEN YOU START OUT ON  
24 THESE BIG CASES, AND I THINK THAT'S WHERE WE ARE HEADED TODAY.

25 I ACTUALLY AGREE WITH MUCH OF WHAT MR. ETH HAS OUTLINED

1 AND WHAT HE HAS PUT IN HIS BRIEFS, AND I HAVE SOME REAL  
2 CONCERNS ABOUT WHAT'S MISSING FROM THE COMPLAINT, ALTHOUGH IT'S  
3 100 PAGES LONG.

4 SO, YOU KNOW, AS I SAY, I THINK WE ARE HEADED TO  
5 AMENDMENT. WE CERTAINLY DON'T DISMISS THE FIRST TIME OUT. BUT  
6 ONE THING THAT DID STRIKE ME WHEN I READ THE COMPLAINT IS IT  
7 DID READ LIKE LOTS OF MY CONSUMER CLASS ACTIONS AT THE  
8 BEGINNING.

9 AND I THINK ONE OF MY OVERARCHING QUESTIONS TO YOU IS  
10 THAT, OR COMMENTS, IF THE CONDUCT THAT YOU ALLEGE ORACLE  
11 ENGAGED IN, AND I WILL ACCEPT THAT AS TRUE, AS BASICALLY  
12 HOLDING AN AUDIT OVER THE HEAD OF THEIR CUSTOMERS AND THEN  
13 MAKING A DEAL THEY COULDN'T REFUSE ON THE CLOUD SERVICES AND  
14 THE ATTACHED DEALS WHERE THE OTHER PRODUCTS WERE DEEPLY  
15 DISCOUNTED, IF THAT IS ACTIONABLE AS A FALSE STATEMENT, THEN  
16 EVERY DISCOUNT A COMPANY OFFERS TO ITS CUSTOMER BASE IS GOING  
17 TO BE GROUNDS FOR A SECURITIES FRAUD CASE IF IT'S NOT  
18 DISCLOSED, OH, BY THE WAY, WE GAVE TEN PERCENT OFF FOR VOLUME.  
19 OR OH, BY THE WAY, WE WERE RESTRUCTURING THE FAILURE TO PAY OF  
20 OUR CUSTOMER AND DISCOUNTED THE PAST DUE AMOUNTS BY THEIR  
21 AGREEING TO BUY FUTURE PRODUCTS FROM US.

22 THAT'S NOT WHAT THE SECURITIES LAWS ARE POLICING IS THE  
23 SALES TACTICS OF THE CUSTOMERS IN REDUCING PRICES. GAAP IS  
24 GOING TO DEAL WITH A LOT OF THAT. AND IT WILL COME IN, AS  
25 MR. ETH SUGGESTS, IN THE REVENUE RECOGNITION. BUT NOTHING THAT

1 I'M AWARE OF, NOR THAT YOU ALLEGE, MAKES THE CONDUCT ITSELF  
2 UNLAWFUL OR FRAUDULENT TO THE CUSTOMERS. THE CUSTOMERS AREN'T  
3 REALLY MY CONCERN HERE, BUT IT IS THE BASIS.

4 AND SO WITH THE GUIDANCE THAT ORACLE OFFERED OVER THE  
5 CLASS PERIOD, WHICH WAS MET IN EVERY INSTANCE WHICH ALERTED  
6 INVESTORS, WE ARE GOING TO START OUT AT THIS HYPERGROWTH, AS  
7 ONE OF THE DEFENDANTS CALLED IT, AND THEN IT'S GOING TO STEP  
8 DOWN TO BE MERELY REMARKABLE GROWTH IN TODAY'S STANDARDS, MAYBE  
9 NOT LIKE MICROSOFT, YOU SUGGEST MICROSOFT AS GROWING AT  
10 90 PERCENT, AND ALL I CAN SAY IS GOOD FOR THEM.

11 BUT HERE, IF ORACLE TOLD ITS INVESTORS, OUR GUIDANCE FOR  
12 THE NEXT QUARTER IS 21 PERCENT, AND THEY MET THAT, I DON'T KNOW  
13 WHAT MORE AN INVESTOR NEEDS TO KNOW. ALL THE REASONS IT'S  
14 GOING TO GO DOWN. ALL THE INVESTOR WANTS TO KNOW IS WHAT'S THE  
15 BOTTOM LINE GOING TO BE.

16 SO THOSE ARE REALLY MY CONCERNS ABOUT THE LACK OF FALSITY  
17 OF THAT FIRST BUCKET OF STATEMENTS. I HAVE REAL CONCERNS ABOUT  
18 WHETHER YOU CAN -- I WILL GIVE YOU A CHANCE, BUT I'M NOT SURE  
19 YOU REALLY HAVE MUCH TO WORK WITH THERE.

20 SO LET ME HEAR FROM YOU NOW.

21 MR. RIZIO-HAMILTON: SO THANK YOU VERY MUCH FOR KIND  
22 OF SETTING THE TABLE. I REALLY APPRECIATE THAT, IT'S VERY  
23 HELPFUL.

24 THE COURT: SURE.

25 MR. RIZIO-HAMILTON: THERE'S A LOT THERE, AND I'M



1 GOING TO TRY TO UNPACK IT A LITTLE BIT.

2 THE COURT: THANK YOU.

3 MR. RIZIO-HAMILTON: SO LET ME START WITH WHAT MIGHT  
4 BE THE MOST FUNDAMENTAL ASPECT OF WHAT YOU'VE SAID, WHICH IS  
5 WHY WOULD THIS BE MISLEADING TO INVESTORS.

6 SO I THINK THAT THERE'S A COUPLE OF POINTS THAT ARE  
7 IMPORTANT TO BEAR IN MIND. THE FIRST IS THE CONTEXT IN WHICH  
8 THIS OCCURRED.

9 THIS WAS A TIME AT WHICH THE MARKET WAS MOST CONCERNED  
10 WITH RESPECT TO ORACLE ABOUT WHETHER IT COULD BUILD A  
11 LEGITIMATE AND HEALTHY AND RAPIDLY GROWING CLOUD BUSINESS. IT  
12 WAS THE SINGLE MOST IMPORTANT ISSUE FACING THE COMPANY ITSELF.

13 WE QUOTE PRETTY DETAILED STATEMENTS FROM THE DEFENDANTS,  
14 THEMSELVES, SAYING THIS WAS A GENERATIONAL SHIFT IN TECHNOLOGY,  
15 AND IT WAS THE COMPANY'S BIGGEST OPPORTUNITY, CERTAINLY THE  
16 MARKET SAW IT THAT WAY. WHATEVER THE COMPANY DID IN CLOUD IS  
17 WHAT HAD THE GREATEST IMPACT ON ITS STOCK DURING THE CLASS  
18 PERIOD OF.

19 IN FACT, THE FINANCIAL PRESS AND OTHER MEDIA OUTLETS  
20 REPORTED THAT ORACLE'S FUTURE AND RELEVANCE WAS PINNED ON ITS  
21 ABILITY TO CREATE THIS CLOUD BUSINESS AND THEY EVEN CALLED IT  
22 ANNEX TERRIBLE ISSUE FOR THE COMPANY.

23 SO IN THAT CONTEXT, THERE IS A WORLD OF DIFFERENCE BETWEEN  
24 WHAT THE MARKET WAS LEAD TO BELIEVE WAS HAPPENING AND WHAT WAS  
25 ACTUALLY HAPPENING AT ORACLE. AND LET ME SORT OF OUTLINE THE

1 TWO DIFFERENT BUSINESS STRATEGIES, AND I THINK THAT MAY HELP  
2 MAKE CLEAR WHY THE SITUATION HERE WAS MISLEADING.

3 SO ON THE ONE HAND, IF ORACLE HAD ACHIEVED THIS SUSTAINED  
4 HYPERGROWTH BY SELLING GREAT PRODUCTS TO CUSTOMERS IN RESPONSE  
5 TO TRUE CUSTOMER DEMAND FOR THOSE PRODUCTS, IT WOULD HAVE A  
6 HEALTHY BUSINESS THAT WAS TRULY BUILT ON CUSTOMER DEMAND AND  
7 TRULY WAS, IN EVERY LEGITIMATE WAY, GROWING IN THE WAY THAT  
8 ORACLE EMPHASIZED ITS BUSINESS WAS GROWING.

9 IF ON THE OTHER HAND, AND THIS IS WHAT HAPPENED HERE, AND  
10 I APPRECIATE THE COURT SAYING THAT IT TAKES THAT FOR GRANTED AT  
11 THIS STAGE OF THE PROCEEDINGS, IF ON THE OTHER HAND ORACLE WAS  
12 REALLY COERCING ITS CUSTOMERS INTO THESE PURCHASES AND COERCING  
13 THEM BY INITIATING AUDITS OF AN ENTIRELY DIFFERENT PRODUCT  
14 LINE, AND ON-PREMISES PRODUCT, AND THEN LEVERAGING THE FINE ON  
15 THE ON-PREMISES AUDIT INTO A SO CALLED PURCHASE OF A CLOUD  
16 PRODUCT, OR ENTICING CUSTOMERS TO MAKE THESE SO CALLED  
17 PURCHASES BY OFFERING THEM REALLY STEEP DISCOUNTS ON A  
18 COMPLETELY DIFFERENT PRODUCT, AGAIN THE ON-PREMISES PRODUCT,  
19 THEN WHAT ORACLE IS REALLY DOING IS SIMPLY DISGUISED LEGACY  
20 ON-PREMISES REVENUE AND CATEGORIZING IT AS CLOUD REVENUE.

21 THE COURT: SO YOU WOULD HAVE TO ALLEGE A GAAP  
22 PROBLEM THERE, AND FOR THE RECORD IT'S G-A-A-P, AND YOU DON'T.

23 NOW MAYBE YOU CAN BECAUSE IF THIS IS A REVENUE RECOGNITION  
24 PROBLEM THEN THE GUIDANCE ON CLOUD IS A FALSE STATEMENT, BUT  
25 YOU HAVE NO ALLEGATIONS ON THAT.

1           SO I MEAN, I DON'T ACTUALLY KNOW THAT YOU ARE TELLING ME  
2           THAT YOU CAN MAKE THOSE ALLEGATIONS, BUT THE COMPLAINT IS  
3           SILENT ON ANY GAAP PROBLEM OR ANY AUDIT PROBLEM.

4           SO I HAVE TO ASSUME AS WELL ON BEHALF OF ORACLE, THAT THE  
5           ACCOUNTING OF THESE SALES AND REVENUE RECOGNITION WAS IN  
6           ACCORDANCE WITH GAAP REQUIREMENTS.

7           SO IF YOU WANT TO ALLEGE IT DIFFERENTLY UNDER A DIFFERENT  
8           THEORY, I WOULD GIVE YOU THE OPPORTUNITY, BUT THAT'S NOT THE  
9           CASE YOU FILED.

10           MR. RIZIO-HAMILTON: WELL, I WOULD MAKE TWO POINTS IN  
11           RESPONSE.

12           THE COURT: OKAY.

13           MR. RIZIO-HAMILTON: THE FIRST IS THAT THERE'S  
14           SIGNIFICANT CASE LAW DEMONSTRATING THAT STATEMENTS ABOUT  
15           REVENUE GROWTH ARE ACTIONABLE AND MISLEADING EVEN ABSENT ANY  
16           ALLEGATIONS OF GAAP VIOLATION.

17           THE COURT: CERTAINLY TRUE. BUT YOU ARE SUGGESTING  
18           THAT THE SALES WERE PHONY BECAUSE OF THE WAY THEY WERE  
19           ACCOUNTED, AND YET YOU HAVE NO ALLEGATION THAT THEY WERE  
20           IMPROPERLY ACCOUNTED.

21           YOU ARE SAYING THE MARKET WANTED TO KNOW THE REASON FOR  
22           THE GUIDANCE NUMBERS.

23           MR. RIZIO-HAMILTON: I'M SAYING THAT THE MARKET  
24           WANTED TO KNOW WHAT THE BUSINESS PRACTICES AND STRATEGY WERE  
25           THAT WERE DRIVING THIS PURPORTED SUSTAINED HYPERGROWTH.

1 THE COURT: SO YOU DIDN'T POINT TO ME A SINGLE CASE  
2 WHERE THE COURT HAS FOUND A FALSE STATEMENT WHERE THE COMPANY  
3 FAILED TO DISCLOSE, OH, BY THE WAY, WE GAVE A TEN PERCENT  
4 DISCOUNT. OR OH, BY THE WAY, WE RESTRUCTURED THE PRIOR DEBT IN  
5 ORDER TO GET THE NEW SALE. I DON'T KNOW OF ANY.

6 MR. RIZIO-HAMILTON: I WILL GIVE YOU A FEW.

7 AND THESE ARE CITED ON PAGE 9 OF OUR BRIEF.

8 THE COURT: OKAY.

9 MR. RIZIO-HAMILTON: SEC V. TODD, THE NINTH CIRCUIT  
10 DECISION, IS ONE OF THEM WHERE THERE WAS A TRANSACTION THAT WAS  
11 PERFECTLY PROPER UNDER GAAP, IT INVOLVED AOL. THERE WERE OTHER  
12 TRANSACTIONS IN THAT CASE AS TO WHICH THERE WERE GAAP  
13 VIOLATIONS, BUT AS TO THE TRANSACTION WITH AOL, THERE WAS NO  
14 GAAP VIOLATION. BUT THE MANNER IN WHICH IT WAS STRUCTURED, I  
15 BELIEVE IT WAS A SALE OF ASSETS, PERMITTED THE COMPANY TO  
16 RECOGNIZE MORE REVENUE ON THE TRANSACTION THAN IT OTHERWISE  
17 WOULD HAVE BEEN ABLE TO AT THE TIME.

18 AND THE COURT HELD THAT NOTWITHSTANDING THE ABSENCE OF A  
19 GAAP VIOLATION, THE COMPANY STATEMENTS ABOUT REVENUE GROWTH  
20 THAT WERE BASED IN PART ON THE REVENUES REALIZED FROM THAT  
21 TRANSACTION WERE MISLEADING.

22 THE COURT: DID THEY MISS THEIR REVENUE GROWTH  
23 PROJECTIONS IN THE SEC CASE?

24 MR. RIZIO-HAMILTON: I DON'T BELIEVE THEY DID, BUT AS  
25 I STAND BEFORE YOU, I AM NOT A ONE HUNDRED PERCENT CERTAIN.

1 THE COURT: I DID NOT READ THAT CASE. I WILL NOW.

2 MR. RIZIO-HAMILTON: ALSO ON PAGE 9 OF THE BRIEF, THE  
3 SUPPORTSOFT CASE IS ONE EXAMPLE WHERE THE COMPANY TOUTED ITS  
4 REVENUE GROWTH, BUT DIDN'T DISCLOSE THAT IT HAD IMPLEMENTED A  
5 POLICY TO GENERATE NEAR TERM REVENUE SPIKES.

6 AND THE COURT HELD THAT THE REVENUE GROWTH STATEMENTS WERE  
7 ACTIONABLE, EVEN THOUGH THE FIGURES WERE ACCURATELY REPORTED  
8 UNDER GAAP. TO THE SAME EFFECT IS THE CRANE CASE, ALSO CITED  
9 ON PAGE 9 OF THE BRIEF, AND THE MURPHY V. PRECISION CASE, WHERE  
10 THE COMPANY'S STATEMENTS ABOUT THE ORGANIC GROWTH IT HAD  
11 SUPPOSEDLY ACHIEVED, WERE MISLEADING WHERE IT OMITTED THAT IT  
12 HAD BEEN "AGGRESSIVELY PULLING IN SALES, OFFERING DISCOUNTS AND  
13 EXTENDING PAYMENT OPTIONS," IN THE WORDS OF THE COURT.

14 SO THERE IS CASE LAW TO SUPPORT PROPOSITION THAT REVENUE  
15 GROWTH STATEMENTS MAY BE ACTIONABLE EVEN WITHOUT A GAAP  
16 VIOLATION. AND YOUR HONOR, THESE SAME CASES STAND FOR ANOTHER  
17 PROPOSITION THAT YOUR OPENING REMARKS TOUCHED UPON WHICH I ALSO  
18 THINK IS VERY IMPORTANT, WHICH IS TO SAY THAT, DO THE  
19 UNDERLYING PRACTICES THAT ARE DRIVING THE REVENUE GROWTH AND  
20 UNDISCLOSED, HAVE TO BE, THEMSELVES, ILLEGAL OR PROHIBITED SUCH  
21 THAT THEY WOULD BE ACTIONABLE IN THE CONSUMER CONTEXT OR  
22 SOMETHING LIKE THAT?

23 AND THE ANSWER IS NO. IN THESE CASES THAT I HAVE JUST  
24 MENTIONED, THE UNDERLYING PRACTICES, THE UNDERLYING DEAL  
25 STRUCTURES AND HOW THE CONTRACTS HAVE BEEN CHANGED IN CERTAIN

1 OF THESE CASES, IT WAS PERFECTLY LEGAL, AND IT WAS PERFECTLY  
2 PERMISSIBLE FROM THE STANDPOINT OF THE CONSUMERS ON THE OTHER  
3 END OF THE TRANSACTIONS OR THE CONTRACTS, BUT NEVERTHELESS, THE  
4 MANNER IN WHICH THE COMPANY SPOKE ABOUT THE REVENUE THAT HAD  
5 BEEN ACHIEVED THROUGH THESE TRANSACTIONS WAS MISLEADING.

6 AND WE RESPECTFULLY SUBMIT THAT THE SAME IS TRUE HERE AND  
7 THAT IT IS PARTICULARLY SO WITHIN THE UNIQUE CONTEXT OF THIS  
8 CASE. AGAIN, THESE STATEMENTS, THE EMPHASIS ON THE PURPORTED  
9 SUSTAINED HYPERGROWTH AND CLOUD SALES, WERE BEING MADE TO THE  
10 MARKET AT A TIME WHERE THE MARKET WAS INTENTLY FOCUSED UPON THE  
11 COMPANY'S ABILITY TO CREATE A RAPIDLY GROWING CLOUD BUSINESS.  
12 AND THERE IS A MATERIAL DIFFERENCE BETWEEN DOING THAT IN THE  
13 TRUE SENSE WHERE YOU ARE TRULY SELLING CLOUD PRODUCTS TO  
14 CUSTOMERS WHO WANT THEM, WHO INTEND TO USE THEM AND HAVE  
15 LEGITIMATE DEMAND FOR THEM, ON THE ONE HAND, AND ON THE OTHER  
16 HAND, DOING IT IN THE MATTER HERE.

17 THE COURT: SO I GUESS I STRUGGLE WITH, WHERE'S THE  
18 LINE BETWEEN KNOWING THAT YOUR CUSTOMERS WON'T RENEW AND HOPING  
19 THEY WILL? YOU KNOW, BECAUSE IT'S LEGITIMATE TO HOPE THAT THEY  
20 WILL RENEW.

21 LET'S TAKE ALL THESE TACTICS OFF THE TABLE AND JUST IN AN  
22 ORDINARY SALE OF A NEW PRODUCT, YOU SELL IT FOR A ONE YEAR TERM  
23 AND THE HOPE AND EXPECTATION IS RENEWAL, BUT NO ONE IS GOING TO  
24 HOLD A SALESMAN OR COMPANY TO A GUARANTEE OF A RENEWAL UNDER  
25 THAT CIRCUMSTANCE.

1           AND WE LOOK AT THAT SIDE BY SIDE WITH WHAT YOU'VE ALLEGED  
2           HERE AS THESE ODIIOUS TACTICS THAT YOU SUGGEST AS PERHAPS AN  
3           INDICATOR THAT AS SOON AS THESE CUSTOMERS GET OUT OF THE SHADOW  
4           OF THE PUNITIVE ALTERNATIVES, THEY ARE GOING TO HEAD FOR A  
5           COMPETITOR.

6           I DON'T KNOW WHERE THE LINE IS. AND THAT'S WHAT MAKES A  
7           CASE LIKE THIS SO DIFFICULT, BECAUSE SALES TACTICS, THERE ARE A  
8           LOT OF BRASS TAX THAT GO ON WITH SELLING, AND I DON'T THINK THE  
9           SECURITIES LAWS ARE REALLY DESIGNED TO POLICE SALES TACTICS IN  
10          THE WAY THESE CLAIMS WOULD SUGGEST, GIVEN THAT THE GUIDANCE WAS  
11          ACCURATE AND MET.

12           MR. RIZIO-HAMILTON: A COUPLE POINTS, YOUR HONOR.

13           I THINK THAT ONE PLACE TO DRAW THE LINE IS WHEN THE  
14          CUSTOMER DIDN'T WANT THE PRODUCT TO BEGIN WITH.

15           THE COURT: SO YOU DON'T HAVE ANY ALLEGATIONS THAT  
16          THE CUSTOMER DOESN'T WANT THE PRODUCT. YOU HAVE NOTHING FROM  
17          THE CUSTOMER. YOU DON'T EVEN HAVE ANYTHING FROM A CW WHO SAYS,  
18          I SPOKE TO A CUSTOMER WHO SAID THEY ARE SQUEEZING ME AND I HAVE  
19          NO CHOICE.

20           MR. RIZIO-HAMILTON: YOU KNOW, WE HAVE MULTIPLE  
21          FORMER EMPLOYEES WHO DO SAY THAT THE CLOUD PRODUCTS THAT WERE  
22          SOLD WERE SOLD TO CUSTOMERS WHO DIDN'T WANT THEM, DIDN'T INTEND  
23          TO USE THEM, AND IN FACT WERE NOT USING THEM.

24           AND WHEN THEY CONTACTED THE CUSTOMERS TO SEE WHY THEY  
25          WEREN'T USING THEM, THEY WERE TOLD THEY DIDN'T WANT THEM IN THE

1 FIRST PLACE AND THEY HAD ONLY PURCHASED THEM UNDER THREAT OF  
2 AUDIT OR IN ORDER TO RECEIVE -- AS TO AN ON-PREMISES PRODUCT OR  
3 TO RECEIVE A DISCOUNT FROM ON AN ON-PREMISES PRODUCT.

4 SO OUR EMPLOYEE REPORTS DO CORROBORATE THAT ALLEGATION,  
5 AND THERE ARE MULTIPLE OF THEM.

6 THE COURT: AND WE HAVE THE OTHER PROBLEM THAT IS  
7 POINTED OUT IN THE OPENING PAPERS WITH THE TIMING.

8 AND SO I CERTAINLY AGREE WITH YOUR CITATION TO CASES THAT  
9 HOLD THAT YOU CAN ALLEGE CIRCUMSTANCES THAT PREDATE THE CLASS  
10 PERIOD, I GUESS OR EVEN POST-DATE, BUT THAT'S OUR CIRCUMSTANCE  
11 HERE, IN ORDER TO GIVE CONTEXT AND TO DRAW INFERENCES ABOUT  
12 WHAT MAY HAVE BEEN OCCURRING IN THE CLASS PERIOD.

13 BUT IN THIS CASE, ALL OF THE STUDIES AND THE REPORTS AND  
14 THE NEWS ARTICLES REALLY, OR THE REALLY BOMBASTIC ONES, ARE  
15 PRE-CLASS PERIOD. AND THERE'S NOTHING, THE CW'S -- I NEED MORE  
16 SPECIFICITY OF TIME, BECAUSE YOU MIGHT SAY GENERALLY DURING THE  
17 CLASS PERIOD. THAT'S SUCH A GENERAL STATEMENT, I'M KIND OF  
18 STRUGGLING WITH THAT.

19 AND IT'S ONLY CW 1 AND CW 3 WHO TALKED ABOUT DURING THE  
20 CLASS PERIOD. CW 5 WORKED FOR THE COMPANY FROM 2016 TO  
21 OCTOBER 2018, AND I DON'T REMEMBER THE ALLEGATION ON CW 5  
22 ACTUALLY ALLEGING ANY FACTS THAT OCCURRED DURING THE CLASS  
23 PERIOD. CW 6 WORKED UNTIL JANUARY 2018, BUT STARTED IN  
24 OCTOBER 2010. AGAIN, I'M NOT SURE WHAT PERIOD OF TIME CW 6 IS  
25 REFERRING TO. I DON'T ACTUALLY -- AND THE SAME WITH CW 9,



1 WORKED FROM 2016 TO 2018, MOSTLY IN THE CLASS PERIOD, OR  
2 PARTIALLY ANYWAY. MY NOTES AREN'T ANY MORE CLEAR THAN THAT.

3 BUT I MEAN, CLEARLY YOU'VE IDENTIFIED WHEN THEY WORKED FOR  
4 THE COMPANY.

5 MR. RIZIO-HAMILTON: SO A COUPLE OF POINTS ON THAT.

6 WE DO THINK THAT THE COMPLAINT IS MORE DETAILED AS TO TIME  
7 THAN DEFENDANTS GAVE IT CREDIT FOR IN THEIR OPENING BRIEF.

8 FORMER EMPLOYEE 1 IS QUITE SPECIFIC AS IT TIME, FORMER EMPLOYEE  
9 1 STATES THAT 75 PERCENT OF HIS --

10 THE COURT: WHAT PARAGRAPH ARE YOU LOOKING AT?

11 MR. RIZIO-HAMILTON: LET'S SEE --

12 THE COURT: IT'S A BIG COMPLAINT, I DON'T EXPECT YOU  
13 TO MEMORIZE IT.

14 MR. RIZIO-HAMILTON: YES. TURNING TO MY NOTES, IF  
15 YOU LOOK AT PARAGRAPH 102, FOR INSTANCE, FORMER EMPLOYEE 1  
16 STATES THAT 75 PERCENT OF THEIR TEAM'S CLOUD SALES IN 2017 WERE  
17 MADE TO CUSTOMERS UNDER THREAT OF LICENSE AUDITS WHO PURCHASED  
18 THE PRODUCT SIMPLY TO AVOID THE HEFTY PENALTIES. IN 2018, SUCH  
19 SALES ACCOUNTED FOR 86 PERCENT OF HIS TEAM'S REVENUE.

20 SO THAT'S ONE EXAMPLE OF SPECIFICITY, YOUR HONOR.

21 FORMER EMPLOYEE 3, FOR INSTANCE, REPORTED THAT WHAT WE  
22 CALL THE ABC TACTIC, THE AUDIT, BARGAIN, CLOSE, WAS AN ACTIVE  
23 PRACTICE THAT WAS STEPPED UP INTO HIGH GEAR IN THE BEGINNING OF  
24 FISCAL YEAR 2017. AND FISCAL YEAR 2017, FOR ORACLE, BEGINS  
25 JUNE 1ST, 2016, SO SHORTLY A FEW MONTHS --

1 THE COURT: SO IT'S ONLY THREE MONTHS IN THE CLASS  
2 PERIOD.

3 MR. RIZIO-HAMILTON: WELL, IT CONTINUES THROUGH  
4 MAY 31ST, 2017. BUT, YOU KNOW --

5 THE COURT: BUT THE CLASS PERIOD DOESN'T START UNTIL  
6 MARCH OF 2017.

7 MR. RIZIO-HAMILTON: AND IT WAS STEPPED UP TO HIGH  
8 GEAR BEGINNING IN FISCAL YEAR 2017.

9 IT EXISTED PREVIOUSLY, BUT IT WAS REALLY ESCALATED AT THAT  
10 PERIOD OF TIME. AND THAT'S THE PERIOD OF TIME LEADING UP TO  
11 THE CLASS PERIOD AND CONTINUING THROUGH THE EARLY PORTION OF  
12 THE CLASS PERIOD.

13 AND YOU KNOW, WE HAVE OTHER FORMER EMPLOYEES WHO SPEAK  
14 ABOUT THE PERCENTAGES OF THEIR TEAM'S REVENUES THAT WERE DRIVEN  
15 BY THESE PRACTICES, SPECIFICALLY DURING THE CLASS PERIOD.

16 I UNDERSTAND THAT DURING THE CLASS PERIOD DOESN'T PUT A  
17 SPECIFIC MONTH OR YEAR ON IT, BUT IT'S NOT A PARTICULARLY LONG  
18 CLASS PERIOD. AND WE THOUGHT THAT, YOU KNOW, COVERING THE  
19 CLASS PERIOD WITH THE ALLEGATION WAS SUFFICIENTLY SPECIFIC.

20 THERE WERE A FEW OTHER POINTS THAT I WANTED TO COVER. IF  
21 YOUR HONOR HAS ANY OTHER QUESTIONS AT THE MOMENT, I'M HAPPY  
22 TO --

23 THE COURT: WE CAN MOVE ON. THANK YOU.

24 MR. RIZIO-HAMILTON: SO WITH RESPECT TO THE CHILEAN  
25 REGULATOR AUDIT, BY THE WAY, THAT AUDIT, WHILE IT WAS BEGUN

1 BEFORE THE CLASS PERIOD, CALLING IT AN AUDIT IS PROBABLY  
2 INACCURATE, INVESTIGATION WAS BEGUN BEFORE THE CLASS PERIOD.

3 IT CONTINUED THROUGH THE CLASS PERIOD INTO 2017. AND THE  
4 FINAL REPORT WASN'T ISSUED UNTIL APRIL OF 2018, ALSO DURING THE  
5 CLASS PERIOD. AND THE REPORT SPECIFICALLY FOUND THAT ORACLE  
6 ENGAGED IN THESE PRACTICES. AND THE CHILEAN REGULATOR  
7 QUESTIONED AT LEAST, I BELIEVE, 51 ORACLE CUSTOMERS.

8 AND SO I THINK THAT THERE'S A FAIR INFERENCE THAT THAT  
9 REPORT PERTAINS TO CONDUCT DURING THE CLASS PERIOD OR AT LEAST  
10 SHORTLY BEFORE. AND THAT IT CONTINUED THROUGHOUT.

11 THE CITY OF DENVER EXAMPLE THAT WE GAVE IN THE COMPLAINT,  
12 AS I RECALL, AND I WOULD HAVE TO GO BACK TO MAKE ONE  
13 HUNDRED PERCENT CERTAIN, BUT I BELIEVE THE FINAL SOLUTION THAT  
14 WAS PROPOSED TO THE CITY OF DENVER ON THE AUDIT WAS PROPOSED IN  
15 DECEMBER 2016 WHICH IS JUST A FEW MONTHS BEFORE THE CLASS  
16 PERIOD BEGINS.

17 AND I THINK THAT THAT'S A FAIR -- THERE'S A FAIR INFERENCE  
18 THERE THAT THAT'S CLOSE ENOUGH IN TIME, TEMPORALLY TO THE CLASS  
19 PERIOD, TO BE INDICATIVE OF CONDUCT OCCURRING DURING THE CLASS  
20 PERIOD, WHICH AGAIN BEGINS IN MARCH, JUST A FEW MONTHS LATER.

21 MOREOVER, YOUR HONOR, AND I THINK THIS IS AN IMPORTANT  
22 POINT, IT WAS MENTIONED THAT THERE'S ANALYST AND MEDIA REPORTS  
23 ON THIS ISSUE AND THAT THEY WERE BEFORE THE CLASS PERIOD. BUT  
24 THAT'S NOT ENTIRELY ACCURATE. THERE ARE MANY ANALYST AND MEDIA  
25 REPORTS DECRYING THIS ISSUE DURING THE CLASS PERIOD. AND I

1 WOULD JUST LIKE TO JUMP TO A COUPLE OF THEM BECAUSE I THINK  
2 THAT THEY ARE WORTH MENTIONING.

3 IN PARAGRAPH 157, FOR INSTANCE, WE HAVE A REPORT FROM  
4 BUSINESS INSIDER, STATING THAT ORACLE'S CUSTOMERS ARE FED UP  
5 WITH ITS HARD-NOSED SALES TACTICS.

6 WE ALSO QUOTE A REPORT FROM JMP ANALYSIS FROM DECEMBER OF  
7 2017. THE BUSINESS INSIDER REPORT WAS ALSO FROM DECEMBER OF  
8 2017. THE JMP ANALYSIS REPORTED THAT MANY CUSTOMERS ARE IRATE  
9 AT ORACLE DUE TO FIST AUDITING PRACTICE AND HAVE ALREADY PLACED  
10 THEIR BETS ON AMAZON, MICROSOFT OR GOOGLE CLOUD.

11 BEYOND THAT, WE HAVE ADDITIONAL MEDIA REPORTS, NOT JUST AT  
12 THE END OF 2017 DURING THE CLASS PERIOD, BUT IN EARLY 2018 ALSO  
13 DURING THE CLASS PERIOD.

14 THE COURT: SO IT KIND OF RAISES THE ISSUE OF  
15 COMPANIES CERTAINLY ENGAGE IN MISGUIDED TECHNIQUES TO INCREASE  
16 THEIR SALES THAT ACTUALLY FAIL. THAT'S NOT ACTIONABLE, THAT'S  
17 JUST BAD BUSINESS JUDGEMENT.

18 MR. RIZIO-HAMILTON: IN A VACUUM, INDEPENDENT OF ANY  
19 STATEMENTS TO THE MARKET, YOU ARE ABSOLUTELY ONE HUNDRED  
20 PERCENT CORRECT.

21 I THINK THE INTERESTING THING HERE ARISES WHEN YOU TAKE  
22 WHAT, IN A VACUUM, WOULD JUST BE A MISGUIDED BUSINESS PRACTICE,  
23 HOLD IT UP AGAINST THE STATEMENTS THAT WERE MADE, AND DO THAT  
24 WHILE TAKING ACCOUNT OF THE GREATER CONTEXT OF THE MARKET AND  
25 WHAT WAS SO IMPORTANT TO IT AT THE TIME TO MAKE A DETERMINATION

1 AS TO WHETHER IN THAT CONTEXT, TAKING THAT FULL PICTURE INTO  
2 ACCOUNT, EVEN IF THE STATEMENTS WEREN'T FLATLY FALSE, WERE MAY  
3 MISLEADING?

4 THAT'S THE QUESTION AT THE HEART OF THE CASE, I  
5 RESPECTFULLY SUBMIT. AND GIVEN THE CONTEXT THAT THESE  
6 STATEMENTS WERE BEING MADE, GIVEN HOW CRITICAL THEY WERE TO  
7 INVESTORS, GIVEN THAT THERE WERE MULTIPLE KINDS OF STATEMENTS  
8 HERE, THESE WERE NOT JUST REVENUE FIGURES THAT WERE PUBLISHED  
9 DETACHED AND STANDING ALONE.

10 THESE WERE REVENUE FIGURES THAT WERE PUBLISHED AND THEN  
11 EMPHASIZED TREMENDOUSLY EMPHASIZED ON EVERY EARNINGS CALLED TO  
12 INVESTORS AS PROOF OF THE COMPANY'S SUCCESS IN ACHIEVING THIS  
13 SEMINAL TRANSFORMATION IN ITS BUSINESS.

14 THERE WERE ALSO --

15 THE COURT: SO THOSE ARE THE FALSE STATEMENTS THAT I  
16 WOULD WANT TO SEE. UNFORTUNATELY, I DON'T THINK YOU ARE  
17 ACTUALLY IDENTIFYING THOSE DURING THE CLASS PERIOD. WHAT YOU  
18 IDENTIFY IN THE FALSE STATEMENTS ARE THE ACTUAL NUMBERS, WHICH  
19 ARE NOT FALSE.

20 AND YOU SAY, YOUR STATEMENT OF WHY THEY ARE FALSE IS THAT  
21 THEY WERE NOT FLESHED OUT AS TO WHY YOU ORACLE MET GUIDANCE.  
22 YOU DON'T HAVE ANY -- YOU HAVE -- YOU DO HAVE A COUPLE OF  
23 STATEMENTS IN THERE THAT ATTRIBUTE THE SALES NUMBERS TO A GREAT  
24 PRODUCT.

25 MR. RIZIO-HAMILTON: YES.

1 THE COURT: OKAY. YOU DO HAVE A COUPLE OF THOSE.  
2 BUT ALL THE OTHERS IN MY FIRST BUCKET OF STATEMENTS ABOUT  
3 REVENUE, I'M NOT SURE, I WILL LET YOU TRY, I DON'T KNOW THAT  
4 THOSE SURVIVE.

5 BUT A STATEMENT OF THE -- I MIGHT BE INTERESTED IN SEEING  
6 WHAT YOU CAN DO IN DEVELOPING THE STATEMENT ABOUT THE CONTEXT  
7 OF THE STATEMENTS ABOUT WHY THE SALES FIGURES ARE SO ROBUST.

8 AND I KNOW YOU HAVE A COUPLE AND WE COULD WALK THROUGH  
9 THEM, BUT I DON'T THINK, I'M NOT SURE THAT'S A GOOD USE OF OUR  
10 TIME.

11 MR. RIZIO-HAMILTON: FAIR ENOUGH.

12 SO THE REVENUE STATEMENTS AND THE EMPHASIS OF THE  
13 SUSTAINED HYPERGROWTH, WE DO BELIEVE ARE MISLEADING FOR THE  
14 REASONS I'VE ALREADY STATED, OKAY. NOT NECESSARILY FALSE.

15 THE COURT: SO HYPERGROWTH IS NOT A GAAP TERM, IT'S  
16 HYPERBOLE. I DON'T THINK IT'S ACTUALLY ACTIONABLE TO SAY  
17 YOU'VE HAD HYPERGROWTH. THE STATEMENT WAS ACTUALLY MADE WHEN  
18 THE COMPANY HAD JUST EXPERIENCED A 58 PERCENT BUMP IN A  
19 QUARTER.

20 AND I DON'T KNOW, I JUST DON'T -- YOU COULD SAY WELL,  
21 MICROSOFT HAD 90 PERCENT, SO IN FACT THIS WAS MODEST. BUT I  
22 JUST THINK THAT'S PUFFERY. HYPERGROWTH, IT'S JUST NOT A -- AND  
23 IT'S BORNE OUT BY 58 PERCENT. I MEAN, 58 PERCENT GROWTH AT ANY  
24 TIME IS PRETTY REMARKABLE.

25 MR. RIZIO-HAMILTON: WELL, THE 58 PERCENT THAT

1 SUPPORTED THAT STATEMENT, WE BELIEVE WAS DRIVEN BY --

2 THE COURT: I UNDERSTAND THAT. BUT THE STATEMENT WAS  
3 "THIS IS HYPERGROWTH." AND THERE WAS NO STATEMENT, AND WE ARE  
4 GOING TO REPEAT THIS QUARTER OVER QUARTER. IN FACT, IT'S  
5 FOLLOWED BY GUIDANCE SHOWING THE STEPPED DOWN GROWTH.

6 MR. RIZIO-HAMILTON: SO TWO POINTS, YOUR HONOR.

7 SO THE REVENUE STATEMENTS, AND WE DO HAVE A COUPLE  
8 STATEMENTS TO THIS EFFECT, WERE USED TO DEMONSTRATE TO THE  
9 MARKET THAT THE COMPANY HAD ACHIEVED THIS TRANSFORMATION.

10 AND THAT'S EXACTLY HOW THE MARKET REACTS TO THEM, BY THE  
11 FALL OF 2017, WE ARE SEEING ANALYST REPORTS, AND THESE ARE PLED  
12 IN THE COMPLAINT, WHERE THEY ARE SAYING THE COMPANY HAS CROSSED  
13 THE CLOUD CAMP. THE COMPANY HAS ROUNDED THE BEND IN ITS CLOUD  
14 TRANSFORMATION.

15 AND YOU KNOW, DEFENDANTS, AT LEAST DEFENDANT CATZ, PERHAPS  
16 DEFENDANT HURD, ARE TOUTING THESE REVENUE GROWTH METRICS AS  
17 PROOF OF THEIR PIVOT TO THE CLOUD, AND THE COMPANY'S  
18 TRANSFORMATION. AND SO THAT'S THE CONTEXT IN WHICH IS THEY  
19 WERE OFFERED TO THE MARKET.

20 AND GIVEN THE MARKET WAS SO CONCERNED ABOUT THIS ONE  
21 ISSUE, STATEMENTS EMPHASIZING THAT REVENUE GROWTH WERE MATERIAL  
22 AND MATERIALLY MISLEADING, THEIR STATEMENTS THAT THE MARKET --  
23 THEY ARE STATEMENTS THAT THE MARKET TOOK VERY SERIOUSLY.

24 THE UNDERLYING 58 PERCENT GROWTH, WE SUBMIT, IS MISLEADING  
25 WHEN THERE'S NO DISCLOSURE OF THE FACT THAT THE GROWTH WAS

1 ACHIEVED IN A WAY THAT WOULD BE OF GREAT CONCERN TO THE MARKET,  
2 AND FAIRLY SO.

3 THE COURT: SO WHERE IS THE LINE BETWEEN WHAT WOULD  
4 BE CONCERNING TO THE MARKET AND WHAT'S JUST A NORMAL DOING  
5 BUSINESS IN AN AGGRESSIVE WAY OF DISCOUNTING PRODUCTS AND  
6 OFFERING A DEAL ON SOME OTHER PRODUCT?

7 MR. RIZIO-HAMILTON: SO I THINK IT WOULD BE A REALLY  
8 DIFFICULT CASE IF THE REVENUE FIGURES WERE JUST NOT GIVEN ANY  
9 CONTEXT BY THE OTHER STATEMENTS, OKAY.

10 AND I WILL GET TO THE DENIALS MOMENTARILY. WE HAVE OTHER  
11 STATEMENTS THAT SURROUND THESE REVENUE GROWTH STATEMENTS THAT  
12 PUT THEM INTO CONTEXT FOR THE MARKET, AND I THINK MAKE THEM  
13 EVEN MORE MISLEADING.

14 WE HAVE STATEMENTS WHERE EVEN IF YOUR HONOR DOESN'T FIND  
15 THEM TO BE FLAT DENIALS, THEY ARE SURELY TAMPING DOWN MARKET  
16 CONCERNS THAT THESE PRACTICES WERE OCCURRING TO A MATERIAL  
17 DEGREE. THAT'S NUMBER ONE.

18 THE COURT: YOU HAVEN'T ACTUALLY ALLEGED FACTS  
19 SHOWING THAT THEY ARE OCCURRING TO A MATERIAL DEGREE.

20 THAT'S ONE OF MR. ETH'S COMMENTS IS THAT YOU HAVE SOMEONE  
21 WHO WORKS IN NORTH AMERICAN SALES, BUT ALL SHE IS RELATING TO  
22 IS THEIR OWN TEAM. AND I DON'T KNOW WHETHER TEAMS HAVE SMALL  
23 REGIONS OR I DON'T KNOW WHAT THEIR TERRITORY IS, I DON'T KNOW  
24 ANYTHING.

25 MR. RIZIO-HAMILTON: WELL, YOUR HONOR, WHEN YOU LOOK



1 AT THE COMPLAINT AS A WHOLE, I THINK THAT THERE ARE ENOUGH  
2 PARTICULARIZED FACTS HERE TO GIVE RISE TO THE INFERENCE THAT  
3 THE MISCONDUCT OCCURRED ON A MATERIAL LEVEL AND HAD A MATERIAL  
4 IMPACT ON THE COMPANY.

5 WE HAVE MULTIPLE FORMER EMPLOYEES FROM VARIOUS REGIONS  
6 ACROSS THE GLOBE. WE HAVE FORMER EMPLOYEES FROM NORTH AMERICA,  
7 FORMER EMPLOYEES FROM THE MIDDLE EAST AND AFRICA AND FROM  
8 EUROPE, ALL OF WHOM GIVE REMARKABLY CONSISTENT ACCOUNTS WITH  
9 RESPECT TO THE FACT THAT THESE PRACTICES ACCOUNTED FOR THE VAST  
10 MAJORITY OF THE SALES THAT THEIR TEAMS ACHIEVED.

11 THEY ALSO GIVE REMARKABLY CONSISTENT ACCOUNTS OF THE DEAL  
12 MECHANICS, AND THEY DESCRIBE A BUSINESS STRATEGY THAT REQUIRED  
13 GLOBAL COORDINATION BETWEEN THE AUDITING FUNCTION AND THE SALES  
14 FUNCTION.

15 BEYOND THAT, WE HAVE THE FINDINGS OF THE CHILEAN REGULATOR  
16 WHO AGAIN LOOKED AT THIS ISSUE FOR YEARS, AND QUESTIONED 50  
17 ORACLE CUSTOMERS.

18 BEYOND THAT, YOUR HONOR, WE HAVE MULTIPLE INDUSTRY  
19 PARTICIPANTS, ADVISORY FIRMS, SUCH AS GARTNER, PALISADES AND  
20 UPPER EDGE. PALISADES, FOR INSTANCE, HAS ADVISED CLIENTS IN  
21 700 AUDITS, ACTUALLY HUNDREDS OF AUDITS. UPPER EDGE IS 700  
22 AUDITS, AND GARTNER IS A WELL-RESPECTED WIDELY PUBLISHING AND  
23 WIDELY READ ADVISORY FIRM. AND ALL OF THOSE PARTICIPANTS SAID  
24 THAT THIS OCCURRED TO A SIGNIFICANT DEGREE.

25 AND IN ADDITION TO THAT, YOUR HONOR, WE HAVE SUBSTANTIAL

1 MEDIA AND ANALYST REACTION DURING THE PERIOD OF TIME WHEN THE  
2 REVENUE GROWTH WAS DECELERATING, ALL OF WHICH SAID THAT  
3 CUSTOMERS WERE, MANY CUSTOMERS WERE FED UP WITH THESE TACTICS,  
4 THESE TACTICS WERE PART OF THE CORE ORACLE PLAYBOOK WHICH ALSO  
5 SUBSTANTIATES THAT THIS WAS A MATERIAL ISSUE AND OCCURRING TO A  
6 MATERIAL DEGREE.

7 AND FINALLY, AT THE END OF THE CLASS PERIOD, WE HAVE THE  
8 GROWTH RATES DECLINING FROM 51 PERCENT TO 20 PERCENT.

9 THE COURT: AS SET FORTH IN THE GUIDANCE.

10 MR. RIZIO-HAMILTON: I WILL JUST FINISH THE THOUGHT  
11 AND THEN DIRECTLY ADDRESS THAT, WHICH FURTHER INDICATES THE  
12 DEGREE TO WHICH THESE PRACTICES PROPPED UP REVENUE GROWTH  
13 DURING THE CLASS PERIOD.

14 THE COURT: SO I GUESS WHAT I'M NOT UNDERSTANDING, I  
15 ACCEPT THE CONTEXT IN WHICH YOU PLACE ALL OF THIS THAT CLOUD  
16 WAS TRANSFORMATIVE AND ALL BUSINESSES NEEDED TO ATTAIN MARKET  
17 SHARE AND CLOUD SERVICES. BUT ORACLE PARTICULARLY NEEDED TO  
18 MAKE THE TRANSFORMATION BECAUSE OF ITS, YOU KNOW, ANY MATURE  
19 COMPANY HAS TO WORRY THAT THE YOUNGINS ARE GOING TO TAKE THE  
20 BUSINESS AWAY BECAUSE THEY ARE MUCH MORE NIMBLE AT DOING THAT,  
21 AND THAT'S A CLASSIC BUSINESS PROBLEM.

22 BUT HERE, WHERE ORACLE TOLD THE MARKET, WE ARE GOING TO  
23 START HERE, WE HAVE 58 PERCENT, AND WE ARE GOING DOWN, THE  
24 MARKET KNOWS WHAT EVERYBODY ELSE IS DOING. AND WHEN THEY SEE  
25 THOSE NUMBERS GOING DOWN, I THINK THAT TELLS THE WHOLE STORY OF

1       THEIR FUTURE IN CLOUD.

2               AND SO FOR AN ANALYST TO SEE THE GUIDANCE, AND TO SAY THAT  
3       ORACLE MADE THE TRANSFORMATION, THAT'S KNOWING THAT, I DON'T  
4       KNOW WHERE THE LIMIT IS HYPERGROWTH VERSUS GOOD GROWTH OR  
5       ORDINARY GROWTH, BUT IT WAS STEPPED DOWN, THAT ROAD MAP WAS  
6       BEFORE THE ANALYST.

7               MR. RIZIO-HAMILTON:   SO TWO POINTS ON THE GUIDANCE.

8               THE FIRST IS THAT AS THE COMPANY'S GROWTH WAS ACCELERATING  
9       IN THE CLOUD, THE THESIS OF THE COMPLAINT IS THAT THAT WAS  
10      PROPPED UP BY THESE TACTICS ON THE FRONT END.

11              ON THE BACK END, SO I DON'T THINK THE GUIDANCE REALLY  
12      HELPS THEM ON THE FRONT END.   ON THE BACK END WHEN THEY WERE  
13      PROJECTING SLOWER GROWTH, THERE IS A MATERIAL DIFFERENCE TO AN  
14      INVESTOR BETWEEN UNDERSTANDING WHY THE GROWTH IS DECELERATING.

15              SO, YOU KNOW, IF THE COMPANY HAD BUILT A HEALTHY CLOUD  
16      BUSINESS BUT WAS EXPERIENCING DECELERATION IN THE PROJECTED  
17      REVENUE DUE TO THE FACT THAT THERE WAS SEASONALITY, IT HAD  
18      SATURATED ITS CUSTOMER BASE, IT WAS WORKING ON A NEW ITERATION  
19      OF CLOUD THAT IT HADN'T YET ROLLED OUT, AND SO IT WAS HOLDING  
20      BACK ON SALES IN THE CURRENT COUPLE OF QUARTERS UNTIL THE NEW  
21      PRODUCT CAME ONLINE.

22              THAT'S ONE THING.

23              THE COURT:   AND YOU DO HAVE SOME ALLEGED FALSE  
24      STATEMENTS OF ATTRIBUTING THE SLOWED DOWN SALES TO NEW PRODUCTS  
25      COMING ONLINE, WHICH YOU CLAIM WERE FALSE, BECAUSE IN FACT THE

1 SLOW DOWN SALES WERE BECAUSE NOBODY WANTED THE PRODUCT.

2 MR. RIZIO-HAMILTON: BECAUSE NOBODY WANTED THE  
3 PRODUCT AND THE CUSTOMERS HAD JUST GOTTEN COMPLETELY FED UP  
4 WITH THIS AND WEREN'T GOING TO TAKE IT ANYMORE. THERE'S ALWAYS  
5 A SATURATION POINT ON THAT.

6 AND I RESPECTFULLY SUBMIT THAT EVEN THOUGH THE COMPANY  
7 PROJECTED THOSE GROWTH RATES TO THE MARKET, THERE'S A  
8 MEANINGFUL DIFFERENCE TO AN INVESTOR IN UNDERSTANDING WHY THE  
9 GROWTH RATES ARE DECLINING, IT COULD BE FOR SOMETHING THAT'S  
10 NOT NECESSARILY TROUBLING, LIKE, WE ARE ABOUT TO DEVELOP A  
11 GANGBUSTER'S NEW PRODUCT AND SO WE ARE PULLING BACK ON SALES  
12 FOR THE NEXT TWO QUARTERS UNTIL WE ROLL THAT OUT.

13 IT COULD BE SOMETHING THAT IS VERY TROUBLING AND IS LIKELY  
14 TO HAVE A MATERIAL NEGATIVE IMPACT ON THE STOCK PRICE, JUST  
15 LIKE THE PRACTICES WE ALLEGE HERE FOR INSTANCE, WHICH IS TO  
16 SAY, WE WERE NEVER SELLING PRODUCTS INTO REAL DEMAND IN THE  
17 FIRST PLACE.

18 THOSE ARE TWO VERY DIFFERENT SCENARIOS, AND I THINK THAT  
19 THE DISCLOSURE OF THE PROJECTIONS DOESN'T SOLVE FOR THAT  
20 BECAUSE IT DOESN'T DISCLOSE THAT.

21 THE COURT: DID YOU WANT TO MOVE INTO SCIENTER OR --

22 MR. RIZIO-HAMILTON: TWO POINTS VERY BRIEFLY, AND  
23 THEN I WILL MOVE INTO SCIENTER.

24 ON THE DENIALS POINT, I THINK THAT ONE THING THAT MR. BOND  
25 SAID IN THE DENIAL THAT OCCURS EARLIER IN THE CLASS PERIOD IS

1        THAT YOU ARE GOING TO SEE THIS CONVERSATION GO AWAY AS WE MOVE  
2        TO THE CLOUD.

3            THAT'S PART OF HIS STATEMENT SAYING THAT THIS IS ONE OF  
4        THOSE THINGS WHERE THE STORY IS BIGGER THAN THE REALITY.

5            THE COURT:    SO I DON'T THINK THAT COMMENT IS  
6        ACTIONABLE, THE STORY IS BIGGER THAN THE REALITY.    BECAUSE IN  
7        FACT, THE ONLY REASONABLE INFERENCE TO DRAW FROM THAT IS BOND  
8        SAYING YEAH, WE ARE DOING IT, BUT IT'S NOT AS BAD AS THEY SAY.

9            AND THEN THERE'S NOTHING MEASURABLE THERE.    THAT'S JUST  
10       NOT A DENIAL.    YOU HAVE SOME OTHER STATEMENTS, BUT THAT ONE  
11       REALLY STRUCK OUT.    HE DIDN'T SAY, WE DON'T DO THAT.    HE DIDN'T  
12       SAY THAT.    HE SAID THE STORY IS BIGGER THAN THE REALITY.

13           HE OWNS UP, IN MY VIEW.    THE ONLY REASONABLE INFERENCE IS  
14       HE OWNS UP TO THAT EXISTING TO SOME EXTENT.

15           MR. RIZIO-HAMILTON:    SO A COUPLE OF POINTS,  
16       YOUR HONOR.

17           ONE IS THAT THE ESSENCE OF THE STATEMENT IS TO ALLEVIATE  
18       CONCERN BY TELLING INVESTORS THAT THIS IS A SMALL THING, NOT A  
19       BIG THING.    AND OUR ALLEGATION IS THAT IT WAS A MATERIAL AND  
20       WIDESPREAD PRACTICE.    THAT'S POINT ONE.

21           POINT TWO IS THAT HE DOES SAY AT THE END OF HIS STATEMENT  
22       THIS CONVERSATION IS GOING AWAY AS WE MOVE TO THE CLOUD, WHICH  
23       IS TO SAY THAT THIS IS NOT A CONCERN IN THE CLOUD SPACE.

24           THE COURT:    BUT THIS WAS MADE IN THE CONTEXT -- I'M  
25       SORRY.

1 MR. RIZIO-HAMILTON: AND I'M LOOKING AT PARAGRAPH 72  
2 NOW. HE SAYS, THE KEY AS WE GO TO CLOUD, IS THIS CONVERSATION  
3 IS GOING TO GO AWAY.

4 THE COURT: I THINK THOSE ARE TWO DIFFERENT ALLEGED  
5 FALSE STATEMENTS THEN. OH, NO, I SEE IT. OKAY.

6 MR. RIZIO-HAMILTON: AND SO WE SUBMIT THAT THAT  
7 BOLSTERS THE REPRESENTATION THAT THIS IS NOT AN ISSUE AS WE GO  
8 TO CLOUD.

9 AND THE LAST POINT I WOULD --

10 THE COURT: YOU KNOW, I GUESS I WILL HAVE TO GO BACK  
11 AND FIND, I DON'T KNOW WHERE THIS STATEMENT -- YOU KNOW, ONCE  
12 ALL CUSTOMERS SWITCH OVER TO CLOUD, THEY HAVE TO BE IN THE  
13 CLOUD.

14 I'M NOT REALLY SURE WHAT THAT STATEMENT IS SAYING. THE  
15 TACTICS THAT YOU IDENTIFY WERE USED IN ORDER TO CONVERT NON  
16 CLOUD CUSTOMERS INTO CLOUD CUSTOMERS. BECAUSE THIS WAS AT THE  
17 INFANCY OF CLOUD COMPUTING.

18 MR. RIZIO-HAMILTON: FOR A SHORT TERM.

19 THE COURT: WELL, AND THAT'S REALLY WHAT HE'S SAYING.

20 SO IN THE SHORT TERM, THESE TACTICS MIGHT WORK, BUT THEY  
21 CAN'T WORK FOREVER. I MEAN, BECAUSE EVERYONE WILL BE IN THE  
22 CLOUD SOMEWHERE. I MEAN, THE TACTIC WON'T EVEN WORK.

23 MR. RIZIO-HAMILTON: WELL, YOU KNOW, I THINK WITHIN  
24 THE CONTEXT OF WHAT'S GOING ON IN THE MARKETPLACE, AND WITHIN  
25 THE CONTEXT OF THE COMPANY'S PRIOR STATEMENTS ON THIS SAME

1       ISSUE WHEN QUESTIONS AROSE, WE ARE ENTITLED TO A READING OF HIS  
2       STATEMENT AT THE PLEADING STAGE WHICH SUGGESTS THAT HE WAS  
3       ASSUAGING CONCERN.

4               THE COURT:   WELL, I DON'T ACTUALLY READ THE PSLRA  
5       QUITE THAT GENEROUSLY FOR YOU BECAUSE I NEED TO LOOK AT THE  
6       INFERENCE BEING MORE PLAUSIBLE THAN OTHER INFERENCES THAT SHOW  
7       NO WRONGDOING.

8               MR. RIZIO-HAMILTON:   WELL, I THINK THAT'S TRUE WITH  
9       RESPECT TO SCIENTER, BUT I'M NOT SO SURE THAT THAT'S  
10      NECESSARILY THE SAME WITH RESPECT TO FALSITY.

11              I THINK WE ARE AT THE PLEADING STAGE, AND WE ARE ENTITLED  
12      TO REASONABLE INFERENCES FROM ALLEGATIONS THAT CONCERN FALSITY.

13              THE COURT:   SO CERTAINLY MY READING OF THE CASES IN  
14      THE NINTH CIRCUIT IS THAT THE NINTH CIRCUIT FOCUSES FAR MORE ON  
15      SCIENTER AS BEING THE PIVOTAL AND OFTEN DECISIVE POINT IN  
16      DISMISSING A CASE.

17              SO LET'S TALK A LITTLE BIT THE SCIENTER.   THERE'S SEVERAL  
18      NAMED DEFENDANTS WHO I DON'T THINK YOU EVEN TOUCH ON SCIENTER.  
19      AND I MENTIONED THOSE BECAUSE MR. ETH MENTIONED THEM IN HIS  
20      REPLY.   ELLISON, KURIAN, BOND AND MIRANDA.   YOU JUST DON'T EVEN  
21      MENTION THEM.

22              MR. RIZIO-HAMILTON:   OKAY.

23              THE COURT:   AND I WOULD LET YOU AMEND ON THAT, BUT DO  
24      YOU THINK YOU MENTIONED THEM?

25              MR. RIZIO-HAMILTON:   SO WHAT WE DO WITH OUR SCIENTER

1 ALLEGATIONS IS WE SET FORTH A NUMBER OF SCIENTER POINTS THAT  
2 APPLY TO ALL THE DEFENDANTS WITH THE EXCEPTION OF --

3 THE COURT: WELL, BUT I'M NOT ACCEPTING THEY WERE  
4 READING THE NEWSPAPER AND THEY KNEW THIS WAS GOING ON, BECAUSE  
5 THAT DOESN'T TELL ME THAT THEY KNEW THE STATEMENTS WERE FALSE  
6 WHEN THEY MADE THEM.

7 MR. RIZIO-HAMILTON: SO I THINK THE SIGNIFICANCE OF  
8 THAT ALLEGATION IS THAT THEY WERE AWARE THAT SIGNIFICANT  
9 QUESTIONS HAD BEEN RAISED ABOUT THIS AND THE MARKET WAS  
10 CONCERNED ABOUT IT.

11 AND SUBSEQUENTLY BEFORE THEY WENT OUT AND SPOKE ON THIS  
12 SUBJECT, THEY HAD AN OBLIGATION TO INFORM THEMSELVES OF THE  
13 TRUE FACTS. AND FAILING TO DO THAT IS RECKLESS, PARTICULARLY  
14 WITHIN THIS CONTEXT.

15 THE COURT: THEN YOU HAVE TO SPEND A LITTLE BIT MORE  
16 TIME ALLEGING.

17 MR. RIZIO-HAMILTON: OKAY.

18 THAT IS THE THEORY.

19 THE COURT: THE FACTUAL ALLEGATION, OF COURSE, NOT  
20 JUST GENERALIZE THIS IS WHAT A GOOD CEO SHOULD DO.

21 MR. RIZIO-HAMILTON: WELL, THAT'S THE CONCEPT BEHIND  
22 ALLEGATION --

23 THE COURT: BECAUSE YOUR CORE OPERATIONS THEORY, I  
24 COULD HAVE MISS TODAY IF IT WASN'T IDENTIFIED IN THE OPENING  
25 PAPERS, YOU DON'T REALLY DEVELOP THAT, IT'S ACTUALLY VERY



1 COMPLEX AND I THINK YOU JUST BRUSH OVER IT AS SAYING WELL, THIS  
2 IS SO IMPORTANT THAT OF COURSE THEY KNOW ABOUT IT.

3 IT'S FINE, I'M GLAD TO ANALYZE CORE OPERATIONS, BUT RIGHT  
4 NOW I CAN EASILY DISMISS WITH LEAVE TO AMEND BECAUSE YOU REALLY  
5 HAVEN'T. IT'S REALLY THE SAME THING WITH READING THE  
6 NEWSPAPER.

7 MR. RIZIO-HAMILTON: THE CORE OPERATIONS THEORY ISN'T  
8 JUST THAT IT WAS IMPORTANT TO THE COMPANY, IT'S ALSO THAT THE  
9 COMPANY EXECUTIVE STATED THAT THEY WERE PERSONALLY FOCUSED ON  
10 THE ISSUE OF CLOUD SALES.

11 IT'S ALSO THAT THE INFORMATION ABOUT THE NATURE OF THE  
12 CLOUD SALES WAS COLLECTED IN THE DEAL APPROVAL SYSTEM THAT WAS  
13 AVAILABLE TO ALL OF THEM.

14 AND SO THE CORE OPERATIONS THEORY DOES HAVE GREATER  
15 STRENGTH IN SUCH A CONTEXT AS THE CASES HAVE RECOGNIZED WHERE  
16 THE EXECUTIVES SAY THEY ARE FOCUSED ON THE ISSUE AND THE  
17 INFORMATION THAT IS ALLEGED TO RENDER THEIR STATEMENTS  
18 MISLEADING IS AVAILABLE TO THEM IN A PARTICULAR SOURCE, AS IT  
19 WAS HERE.

20 AND I WILL AGREE WITH YOU THAT THE SCIENTER ALLEGATIONS  
21 ARE STRONGEST WITH RESPECT TO DEFENDANT'S HURD AND CATZ. AND  
22 IN PARTICULAR, THE ALLEGATIONS THAT THEY HAD TO SIGN OFF ON ALL  
23 CLOUD DEALS IN EXCESS OF \$5 MILLION OR WHERE A DISCOUNT OF  
24 50 PERCENT OR GREATER WAS OFFERED THROUGH THE DEAL APPROVAL  
25 SYSTEM.

1           AND THE FACT THAT THEY DID SO IS SIGNIFICANT FOR THE  
2           SCIENTER ANALYSIS BECAUSE IT GAVE THEM KNOWLEDGE OF THE FACT  
3           THAT THE SALES WERE GENERATED THROUGH THE MEANS ALLEGED. AND I  
4           THINK THAT THAT GIVES RISE TO AN INFERENCE OF KNOWLEDGE HERE.

5           AND SO I THINK THAT THOSE ARE THE PRINCIPLE SCIENTER  
6           ALLEGATIONS AGAINST THOSE TWO DEFENDANTS. AND THE OTHER  
7           ALLEGATIONS THAT ARE SET FORTH IN THE SCIENTER SECTION  
8           SUPPLEMENT THEM.

9           AND WHEN YOU LOOK AT THE PICTURE WHOLISTICALLY,  
10          PARTICULARLY GIVEN THAT THEY HAD TO APPROVE ALL SIGNIFICANT  
11          CLOUD DEALS AS DESCRIBED, THERE IS WITH RESPECT TO THOSE TWO  
12          DEFENDANTS, A STRONG INFERENCE OF AT LEAST RECKLESSNESS.

13          THE COURT: OKAY. WELL, CERTAINLY YOU HAVE SOME  
14          SPECIFIC FACTS AS TO THEM.

15          MR. RIZIO-HAMILTON: WE DO. WE DO. AND THOSE ARE  
16          SET FORTH IN THE COMPLAINT. I DON'T NEED TO REHASH THEM. WE  
17          SUMMARIZED IN THE BRIEF. I'M CERTAINLY HAPPY TO ANSWER ANY  
18          QUESTIONS ABOUT THEM.

19          THERE IS ONE ISSUE YOUR HONOR RAISED THAT I DO WANT TO  
20          BRIEFLY TOUCH ON. YOU ASKED FOR, WHERE IS MR. MIRANDA'S  
21          STATEMENT, AND IT'S IN PARAGRAPHS 252 AND 253, YOUR HONOR.

22          HE PROVIDES A STATEMENT THAT IS SIMILAR IN KIND TO THE  
23          ALLEGED MISREPRESENTATION BY MR. HURD IN WHICH DESCRIBING THE  
24          CAUSES OF THE COMPANY'S SUCCESS IN CLOUD.

25          AND WE ALLEGE THAT THAT WAS MISLEADING FOR FAILURE TO

1 DISCLOSE THE USE OF FINANCIALLY ENGINEERED DEALS WAS, IN FACT,  
2 ANOTHER SIGNIFICANT DRIVER OF THE CLOUD SUCCESS.

3 THE COURT: AND I HAD MARKED THESE, AND I'M SORRY I  
4 HAD FORGOTTEN.

5 MR. MIRANDA TALKS ABOUT THE REASON THAT CUSTOMERS ARE  
6 COMING OVER TO ORACLE. "WHAT WE HEAR FROM OUR CUSTOMERS, AS  
7 FAR AS THE REASONS WHY THEY CHOOSE US OVER THE COMPETITION."

8 SO, YOU KNOW, THIS IS COUCHED INTO WHAT MIRANDA IS HEARING  
9 FROM THE CUSTOMERS. YOU ARE ALLEGING THAT HE'S MADE THAT UP  
10 ENTIRELY, THAT'S NOT WHAT HE'S HEARING?

11 MR. RIZIO-HAMILTON: NO, THAT'S NOT THE ALLEGATION.

12 THE ALLEGATION IS THAT SUCH A STATEMENT IS MISLEADING  
13 BECAUSE IT OMITTS OTHER MATERIAL INFORMATION THAT IS CLEARLY  
14 RELATED TO WHAT ORACLE IS HEARING FROM ITS CUSTOMERS AND WHAT  
15 IS CLEARLY DRIVING ITS SUCCESS IN THE CLOUD.

16 AND MR. HURD, FOR HIS PART, MAKES A SIMILAR STATEMENT, YOU  
17 KNOW, IN WHICH HE'S ASKED ABOUT THE DRIVERS OF THE COMPANY'S  
18 SUCCESS IN THE CLOUD, AND HE BASICALLY SAYS WE ARE BETTER, WE  
19 HAVE BETTER PRODUCTS, WE HAVE BETTER SALES FORCE, WE ARE JUST  
20 BETTER AT EVERYTHING. AND THAT MANIFESTS.

21 THE COURT: EVERY CEO AND SALESMAN IS GOING TO SAY  
22 THAT EVERY TIME.

23 MR. RIZIO-HAMILTON: WELL, UNDER THE SECURITIES LAWS,  
24 IF HE DOES, HE RUNS THE RISK OF GIVING A MISLEADING IMPRESSION  
25 IF HE OMITTS OTHER MATERIAL FACTORS DRIVING THE COMPANY'S

1 PERFORMANCE WHICH MR. HURD WAS ALLEGED TO DO HERE.

2 YOU KNOW HE'S FREE TO TOUT THE COMPANY'S SUPERIORITY SO  
3 LONG AS HE IS ACCURATELY DISCLOSING ALL ADDITIONAL MATERIAL  
4 INFORMATION ABOUT THAT SUBJECT. AND HERE, HE DID NOT.

5 THE COURT: OKAY.

6 MR. RIZIO-HAMILTON: SO THAT'S ALL I'VE GOT RIGHT  
7 NOW, YOUR HONOR. I REALLY APPRECIATE YOU HEARING ME OUT.

8 THE COURT: OH, NO, I WANT TO HEAR YOU OUT.

9 THESE CASES, I FULLY RECOGNIZE THAT WHEN A CASE LIKE THIS  
10 CROSSES THE THRESHOLD OF THE MOTION TO DISMISS AND THE  
11 DEFENDANT HAS TO ANSWER, THAT MOST CASES TERMINATE AT THAT  
12 POINT AFTER LENGTHY NEGOTIATIONS INTO A SETTLEMENT.

13 AND SO CONGRESS HAS DIRECTED US TO HOLD YOU TO A HIGH BAR  
14 IN PLEADING, YOU ARE USED TO THAT, THAT'S NOT NEW LAW AT THIS  
15 POINT, IT'S 25 YEARS, MAYBE MORE, FOR THE PSLRA. I THINK THIS  
16 CAME IN IN THE 90'S, DIDN'T IT?

17 MR. ETH: DECEMBER 22ND, 1995.

18 THE COURT: AND I THINK BOTH OF YOU WERE PRACTICING  
19 LAW WHEN IT CAME IN. AND IT TOOK THE COURTS A LONG TIME TO GET  
20 IT, I THINK, AND TO IMPOSE THESE HEIGHTENED BURDENS ON  
21 PLAINTIFFS, BUT THE NINTH CIRCUIT HAS CERTAINLY SET THE  
22 STANDARD THAT I FOLLOW.

23 SO LET ME -- I WANT TO HEAR FROM MR. ETH JUST TO FINISH UP  
24 BECAUSE I THINK HE PROBABLY WANTS TO ADDRESS SOME OF YOUR  
25 POINTS, MR. RIZIO-HAMILTON, AND THEN I WILL OF COURSE HAVE A

1 WRITTEN ORDER, BUT I THINK LARGELY YOU KNOW THE AREAS THAT I'M  
2 CONCERNED ABOUT.

3 MR. RIZIO-HAMILTON: THANK YOU VERY MUCH, YOUR HONOR.

4 THE COURT: OKAY.

5 MR. ETH: YOUR HONOR, I WILL BE BRIEF HERE, JUST  
6 QUICKLY ADDRESS SOME OF THE POINTS.

7 THE COURT: OKAY. THANK YOU.

8 MR. ETH: OBVIOUSLY THERE'S A LOT OF BACK AND FORTH,  
9 WHERE'S THE LINE, WHAT'S THE RULE. AND PLAINTIFF, IN OUR VIEW,  
10 IS TRYING TO COME UP WITH NEW RULES TO GOVERN ALL OF THIS.

11 WE DO HAVE RULES, THEY ARE CALLED GAAP RULES, THEY ARE  
12 CALLED ACCOUNTING RULES. IT'S COMPLICATED, IT'S DENSE,  
13 ESPECIALLY WHEN YOU START THINKING ABOUT SOFTWARE AND  
14 MULTI-ELEMENT SALES AND DISCOUNTS AND RATEABLY AND SUBSCRIPTION  
15 SERVICES AND SO ON. WE DON'T NEED A WHOLE NEW SET OF RULES.  
16 WE HAVE THOSE RULES.

17 WE HEARD ABOUT THE S.E.C. V. TODD CASE. IT'S NOT A PSLRA  
18 CASE, YOU CAN TELL THAT JUST FROM THE TITLE, IT'S S.E.C. ALSO  
19 IT WASN'T A PLEADING CASE, IT WAS AFTER A JURY TRIAL AND IT WAS  
20 AFTER A VERDICT, AND THERE WAS A FINDING OF ACCOUNTING FRAUD IN  
21 THAT CASE AND A GAAP VIOLATION, IT HAS NOTHING TO DO WITH THIS.

22 SOME OF THE OTHER CASES PLAINTIFF CITE ON PAGE 9, I THINK  
23 IT IS IN PLAINTIFF'S BRIEF, THOSE ARE THE FEW THEY CITE THAT  
24 ARE THE SO CALLED APPLES TO APPLES CASES WHERE A COMPANY WILL  
25 SAY, WE ARE DOING SO MUCH BETTER THAN LAST YEAR. WELL, YOU

1 CHANGED THE WAY YOU DO YOUR ACCOUNTING OR YOU CHANGED YOUR  
2 BUSINESS MODEL AND SO IT'S NOT AN APPLES TO APPLES COMPARISON.

3 COUNSEL POINTED TO PARAGRAPHS 102 AND 103. THAT'S FINE.  
4 WE WILL LOOK AT THOSE. THOSE EXEMPLIFY THE PROBLEM. IT'S  
5 83 PERCENT OF THE TEAM, OF THE DEALS THAT OUR TEAM DEALT WITH.  
6 THAT'S THE BEST THEY CAN DO, 83 PERCENT OF WHAT THE TEAM DEALT  
7 WITH, WHAT DOES THAT EVEN MEAN.

8 THE CASES, WE PREFER, OF COURSE, THAT ARE RIGHT ON POINT  
9 ARE INTUITIVE, AND THIS COURT'S BAO V. SOLARCITY CASES AND SO  
10 ON.

11 WE HEARD THAT CUSTOMERS WERE COMPLETELY FED UP WITH  
12 ORACLE, COMPLETELY FED UP. WELL, THE LINE WAS STILL GOING UP  
13 AND TO THE RIGHT. IT'S JUST DECELERATION, IT'S STILL GOING  
14 UPHILL, SO I DON'T EVEN GET THAT.

15 AND THEN JUST KIND OF WRAPPING UP THE WHOLE IDEA HERE IS  
16 WE HEARD COUNSEL SAY THIS IS INTERESTING, AND THE CONTEXT IS  
17 INTERESTING. AND IT MAY VERY WELL BE INTERESTING, IT MAY BE AN  
18 INTERESTING STUDY OF CUSTOMER RELATIONS OR HARVARD BUSINESS  
19 SCHOOL CASE STUDY OR LOTS OF THINGS TO TALK ABOUT, BUT IT'S NOT  
20 SECURITIES FRAUD, IT'S NOT SECURITIES FRAUD.

21 AND THAT'S WHAT THEY HAVEN'T MET. THE STANDARDS FOR  
22 PLEADING SECURITIES FRAUD UNDER THE PSLRA.

23 OH, THERE'S ONE OTHER THING I WANTED TO MENTION. WE ARE  
24 ON FOR CASE MANAGEMENT.

25 THE COURT: WE WILL GET TO THAT SO YOU DON'T HAVE TO

1       WAIT AROUND. LET ME JUST WRAP THIS PART UP.

2               MR. RIZIO-HAMILTON, I'M GOING TO MAKE YOU AMEND THE  
3 COMPLAINT.

4               MR. RIZIO-HAMILTON: UNDERSTOOD.

5               THE COURT: BUT I'M GOING TO ALLOW YOU TO AMEND ON  
6 EVERYTHING.

7               AND I THINK YOU UNDERSTAND THE AREAS I'M MOST CONCERNED  
8 ABOUT. AND I DO THINK THAT SCIENTER IS THE BIGGEST HOLE IN  
9 THIS COMPLAINT, ESPECIALLY AS TO THE INDIVIDUALS.

10              IF YOU WISH TO ASSERT THE CORE OPERATIONS THEORY, YOU  
11 ACTUALLY HAVE TO ALLEGE FACTS TO SHOW IT, AND I DON'T THINK YOU  
12 HAVE. YOU'VE KIND OF WAIVED IT OUT THERE AS EXISTING, BUT I'M  
13 NOT SATISFIED WITH PLEADING ON IT.

14              ON THE FALSE STATEMENTS WITH THE REVENUE, THE ONES THAT  
15 ARE SIMPLY STATEMENTS OF WHAT THE REVENUE IS AND MEETING THE  
16 GUIDANCE, I'M STRUGGLING WITH THOSE, AS I DON'T REALLY  
17 UNDERSTAND YOUR THEORY, I GUESS, ON WHY A DUTY TO DISCLOSE  
18 ARISES FROM TRUTHFULLY STATING THE REVENUE NUMBERS, ABSENT A  
19 GAAP VIOLATION, AND IT SEEMS AS THOUGH THERE ISN'T ONE.

20              I WILL CERTAINLY GO BACK AND READ THOSE CASES ON PAGE 9 OF  
21 YOUR BRIEF, I'M NOT SURE THAT'S GOING TO CURE OR SATISFY MY  
22 CONCERN, BUT THOSE ARE AREAS THAT I'M VERY CONCERNED ABOUT.

23              AND OF COURSE THAT KIND OF COVERS THE WATERFRONT. THERE  
24 MAY BE A FEW STATEMENTS THAT I ELIMINATE AS PUFFERY, BUT THAT'S  
25 NOT SIGNIFICANT, EVEN IN THE BRIEFING IT WAS ONLY A FEW AROUND

1 THE EDGES.

2 SO I HAVE SOME CASES WHERE THAT'S REALLY ALL THERE IS AND  
3 THE WHOLE CASE IS IN JEOPARDY.

4 IT'S ALWAYS HARD TO MAKE PREDICTIONS, I'VE HAD CASES THAT  
5 HAVE GONE THREE ROUNDS AND THEN I'VE LET THEM GO THROUGH WHERE  
6 I THOUGHT THE CASE WAS HEADED INTO OBLIVION AND IT WASN'T  
7 BECAUSE ONE OR TWO OF THE STATEMENTS CAME THROUGH.

8 I'M NOT GOING TO PREDICT, BUT RIGHT NOW I'M GIVING YOU  
9 LEAVE TO AMEND BECAUSE YOU HAVE A LOT HERE AND YOU HAVE A LOT  
10 OF THEORIES, BUT I DON'T WANT THIS TO JUST BE A CASE THAT'S  
11 BASED ON PRE-CLASS PERIOD BAD PRESS FOR THE COMPANY WITHOUT ANY  
12 SOLID EVIDENCE ALLEGATIONS DURING THE CLASS PERIOD.

13 IT IS NOTABLE THAT WE HAVE NOTHING FROM CUSTOMERS THAT  
14 THEY WERE SO UNHAPPY, THEY CAN'T BE HARD TO FIND.

15 AND THE CW'S THEMSELVES PROBABLY KNOW WHO THESE CUSTOMERS  
16 WERE THAT WERE SO UNHAPPY. NOW MAYBE NOBODY WANTS TO SPEAK UP  
17 AGAINST ORACLE, I GET THAT.

18 MR. RIZIO-HAMILTON: THAT IS A REAL ISSUE.

19 THE COURT: IT IS A REAL ISSUE, YES, I UNDERSTAND,  
20 BECAUSE THEY MAY HAVE EXISTING CONTRACTS OR HOPE IN THE FUTURE  
21 TO HAVE FAVORABLE OPPORTUNITIES. SO I'M NOT SAYING THAT'S  
22 NECESSARY, BUT IT IS NOTABLE, AS MR. ETH POINTS OUT.

23 ALL RIGHT. AS I SAY, THERE WILL BE A WRITTEN ORDER.

24 WHEN YOU GET THE ORDER, AND I CAN'T PROMISE IT WILL BE  
25 RIGHT AWAY, BUT I'M MORE THAN GLAD TO GIVE YOU AMPLE TIME TO



1 RESPOND IN AN AMENDED COMPLAINT.

2 SO FROM THE DATE I ISSUE THE ORDER, HOW MUCH TIME WOULD  
3 YOU LIKE?

4 MR. RIZIO-HAMILTON: 60 DAYS.

5 THE COURT: ANY OBJECTION TO THAT, MR. ETH?

6 MR. ETH: NO, YOUR HONOR.

7 THE COURT: I KNOW IT'S A LOT OF WORK.

8 MR. RIZIO-HAMILTON: THANK YOU, YOUR HONOR.

9 THE COURT: GOOD. OKAY.

10 ON CASE MANAGEMENT, YOU SUGGEST THAT IT'S PREMATURE TO SET  
11 DATES. AND I DON'T DISAGREE WITH THAT IN THIS CASE BECAUSE I  
12 THINK IN A CASE LIKE THIS, WELL, TYPICALLY CLASS CERTIFICATION  
13 IS NOT ACTUALLY A BIG BATTLE, BUT I DON'T KNOW, I'VE ACTUALLY  
14 NEVER HAD A CLASS CERTIFICATION ON A SECURITIES CASE, AND I  
15 DON'T KNOW HOW THIS LOOKS, BUT WHAT I'M GOING TO DO IS I'M  
16 GOING TO SET A FURTHER CASE MANAGEMENT CONFERENCE JUST FOR  
17 TRACKING PURPOSES, 120 DAYS FROM NOW.

18 SO LET'S JUST GIVE YOU A DATE AND THEN IT WILL BE ON THE  
19 DOCKET.

20 THE CLERK: THAT WOULD BE FEBRUARY 20TH.

21 THE COURT: OKAY.

22 NOW, IF THE AMENDED COMPLAINT HAS NOT BEEN FILED OR IT'S  
23 BEEN FILED AND THERE'S A MOTION TO DISMISS, WOULD YOU JUST SEND  
24 ME A STIP AND ORDER TO CONTINUE THE CASE MANAGEMENT?

25 MY GOAL IS TO HAVE THE NEXT CASE MANAGEMENT EITHER AFTER

1 THE ANSWER IS FILED OR THE NEXT TIME YOU ARE HERE ON A MOTION  
2 TO DISMISS. I FULLY EXPECT THERE WILL BE A MOTION TO DISMISS.  
3 I DON'T THINK, MR. ETH, YOU ARE JUST GOING TO SAY OH, YOU'VE  
4 HEARD EVERYTHING, LET'S GO.

5 MR. RIZIO-HAMILTON: THAT WOULD BE A FIRST.

6 THE COURT: IT WOULD BE A FIRST.

7 MR. ETH: WELL, WE WILL WAIT AND SEE.

8 THE COURT: WE WILL JUST KEEP MOVING. ALL RIGHT. I  
9 THINK THAT TAKES CARE OF EVERYTHING. THANK YOU BOTH. I REALLY  
10 APPRECIATE THE EXCELLENT ARGUMENT.

11 MR. RIZIO-HAMILTON: THANK YOU, YOUR HONOR.

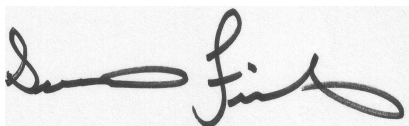
12 MR. ETH: THANK YOU, YOUR HONOR.

13 (THE PROCEEDINGS WERE CONCLUDED AT 10:13 A.M.)  
14  
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16  
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25

**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 10/23/19